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October 20, 2004

VIA HAND DELIVERY
Sara Boardman
West Virginia Municipal Bond Commission
812 Quarrier Street
Charleston, WV 25301

Re: $167,260,000 State Of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B

Dear Sara:

Enclosed please find the closing transcript for the above-referenced bond financing. I have also enclosed a CD-ROM of the B Bonds.

Please note there is missing information under the Tax Compliance Certificate (Tab 2). I will forward that information to you once it is made available.

In the interim, should have any questions or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Teresa L. Hoskins
Legal Assistant

/tlh/328190
Enclosure

$167,260,000
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

Closing Date: August 31, 2004
Volume I of II

$167,260,000
STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

Closing Date: August 31, 2004

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318916

RECYCLED PAPER
RECYCLABLE

STATE OF WEST VIRGINIA

UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES

STATE UNIVERSITY SYSTEM REVENUE AND REFUNDING BONDS

GENERAL RESOLUTION

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A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE FROM TIME TO TIME BY THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES OF STATE UNIVERSITY SYSTEM REVENUE BONDS TO FINANCE ALL OR A PORTION OF THE COSTS OF ACQUISITION, CONSTRUCTION, RENOVATION, IMPROVEMENT AND EQUIPPING OF FACILITIES, BUILDINGS AND STRUCTURES FOR STATE INSTITUTIONS OF HIGHER EDUCATION, CONSISTING OF THE UNIVERSITY OF WEST VIRGINIA AND THE STATE UNIVERSITY SYSTEM UNDER THE SUPERVISION, MANAGEMENT AND CONTROL OF THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES IN THE STATE OF WEST VIRGINIA; AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF STATE UNIVERSITY SYSTEM REVENUE REFUNDING BONDS TO REFUND ALL OR A PORTION OF CERTAIN TUITION FEE AND REGISTRATION FEE REVENUE BONDS OF THE WEST VIRGINIA BOARD OF REGENTS; AND AUTHORIZING AND PROVIDING FOR THE ISSUANCE FROM TIME TO TIME OF STATE UNIVERSITY SYSTEM REVENUE REFUNDING BONDS TO REFUND ALL OR A PORTION OF THE STATE UNIVERSITY SYSTEM REVENUE OR REVENUE REFUNDING BONDS TO BE ISSUED HEREUNDER BY THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES AND OTHER BONDS HERETOFORE OR HEREAFTER ISSUED TO ACQUIRE, CONSTRUCT, RENOVATE, IMPROVE OR EQUIP FACILITIES, BUILDINGS AND STRUCTURES FOR SUCH STATE INSTITUTIONS OF HIGHER EDUCATION OR TO REFUND SUCH BONDS.

WHEREAS, the Legislature of the State of West Virginia has, pursuant to Chapter 18B, Articles 1, 2 and 3 of the Code of West Virginia, 1931, as amended (the "Governing Board Act"), created two governing boards for State institutions of higher education to succeed to the powers, duties, responsibilities and properties previously vested in the West Virginia Board of Regents, such governing boards being designated the "University of West Virginia Board of Trustees" and the "Board of Directors of the State College System," respectively;

WHEREAS, pursuant to the Governing Board Act, the University of West Virginia Board of Trustees is to govern the University of West Virginia and the State university system, being the multi-campus, integrated university of the State, consisting of West Virginia University including West Virginia University at Parkersburg, Potomac State College of West Virginia University and the West Virginia University Health Sciences Center; Marshall University including the Marshall University School of Medicine; the University of

West Virginia Graduate College; and the West Virginia School of Osteopathic Medicine;

WHEREAS, pursuant to the Governing Board Act, the Board of Directors of the State College System is to govern the State college system, consisting of all state colleges and community colleges in the State, including Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology, West Virginia State College, Southern West Virginia Community College, West Virginia Northern Community College and any institution of higher education which has been designated as a community college by the Board of Directors of the State College System;

WHEREAS, the West Virginia Board of Regents (the "Board of Regents") has heretofore issued several series of revenue bonds or revenue refunding bonds (hereinafter collectively defined as the "Prior Bonds"), payable from and secured by tuition and registration fees collected from students at State institutions of higher education;

WHEREAS, the University of West Virginia Board of Trustees (the "Board) and the Board of Directors of the State College System (the "College" System Board") have determined that interest cost savings may be realized by the refunding of the Prior Bonds currently outstanding and that such refunding is therefore advantageous, and each have determined to concurrently issue revenue refunding bonds to accomplish such refunding and to allocate the amount of such revenue refunding bonds to be issued by each board in proportion to the tuition and registration fees available to each board for payment of debt service of such bonds;

WHEREAS, the respective boards have further determined to provide for future issues of revenue bonds and revenue refunding bonds pursuant to this General Resolution and pursuant to a similar general resolution to be adopted by the College System Board;

NOW THEREFORE, BE IT RESOLVED BY THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution (the "General Resolution") is adopted pursuant to the Governing Board Act, Chapter 18, Article 12B and Chapter 18B, Article 10 of the Code of West Virginia, 1931, as amended (collectively, together with the Governing Board Act, the "Act"), Chapter 13, Article 2G of the Code of West Virginia, 1931, as amended (the "Refunding Act"), and other applicable provisions of law. This resolution is hereinafter sometimes referred to as the "University College System Revenue Bond General Resolution" and may be so cited.

Section 1.02. Definitions. In addition to the terms defined in the recitals hereto, the following terms shall have the following meanings unless the context shall otherwise clearly require:

"Accountant" means such reputable and experienced independent certified public accountant or firm of independent certified public accountants as may be selected by the Board.

"Accreted Value" means the amounts set forth in and the amounts computed pursuant to the formula set forth in a Related Supplemental Resolution authorizing the issuance of the Capital Appreciation Bonds the Accreted Value of which is being determined.

"Act" means, collectively Chapter 18, Article 12B and Chapter 18B, Articles 1, 2, 3 and 10 of the Code of West Virginia, 1931, as the same have been and may from time to time be amended.

"Additional Bonds" means any Bonds issued, executed, authenticated and delivered pursuant to this General Resolution, other than the Series 1992 Bonds, to finance the Costs of Projects or for any other purpose permitted hereunder and by the Act, and may include Variable Rate Bonds or Capital Appreciation Bonds, provided that, if Variable Rate Bonds, such Additional Bonds shall provide a cap upon the interest rate for such Additional Bonds and upon the interest rate to be paid to the issuer of any Credit Facility issued in connection with such Additional Bonds.

"Authorized Denominations" means, with respect to the Series 1992 Bonds, $5,000 and integral multiples thereof, and, with respect to any Additional Bonds or Refunding Bonds issued hereunder, such denominations as may be set forth in the Related Supplemental Resolution.

"Authorized Newspaper" means a newspaper or financial journal, printed in the English language and customarily published (except in the case of legal holidays) at least once a day for at least five days in each calendar week, of general circulation in the Borough of Manhattan, State of New York.

"Authorized Officer" means the Chairman or Vice-Chairman of the Board, and, in the case of any act to be performed or duty to be discharged, any other member, officer or employee of the Board then authorized to perform such act or discharge such duty.

"Board" means the University of West Virginia Board of Trustees, a public corporation and a governmental instrumentality of the State, exercising essential governmental functions for a public purpose and created by the Act, and any body, agency, board or instrumentality which may succeed to the functions of the Board.

"Bond" means one of the bonds delivered pursuant to this General Resolution, including the Series 1992 Bonds, any Additional Bonds and any Refunding Bonds issued pursuant to Article II hereof.

"Bond Counsel" means an attorney or firm of attorneys of recognized standing in the field of law relating to municipal, state and public agency financing, selected by the Board.

"Bond Counsel's Opinion" means an opinion signed by Bond Counsel rendered pursuant to the provisions of this General Resolution.

"Bond Fund" means a fund by that name established with the Commission pursuant to Section 7.01 hereof with respect to a Series of Bonds.

"Bond Proceeds Fund" means a fund by that name established with the State Treasury pursuant to Section 7.01 hereof with respect to a Series of Bonds.

"Bond Year" means, with respect to a Series of Bonds, the period established and designated as such by the Related Supplemental Resolution.

"Budget Period" means a 12-month period commencing on July 1 and ending on the following June 30.

"Business Day" means any day other than (i) a Saturday, Sunday or legal holiday, and (ii) a day on which banking institutions located in the City of New York or in any of the cities in which the respective Principal Offices of the Registrar or any Paying Agent or

Tender Agent are located, are required or authorized by law or executive order to close.

"Capital Appreciation Bonds" means Bonds that bear interest payable at maturity, upon redemption prior to maturity or prior to maturity at the date set forth in the Related Supplemental Resolution in the amounts determined by reference to the Accreted Value of such Capital Appreciation Bonds in accordance with the provisions of the Related Supplemental Resolution.

"Certificate" means (i) a signed document either attesting to or acknowledging the circumstances, representations or other matters therein stated or set forth or setting forth matters to be determined pursuant to this General Resolution or (ii) the report of an Accountant as to audit or other procedures called for by this General Resolution.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

"Commission" means the West Virginia Municipal Bond Commission or its successor.

"Computation Date" means the last day of the fifth Bond Year and each succeeding fifth Bond Year applicable to a Series of Bonds, and the date on which the last Bond of such Series of Bonds is discharged.

"Costs of Issuance" means all items of fees and expenses, directly or indirectly payable or reimbursable by or to the Board and related to the authorization, sale and issuance of Bonds, including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Commission, any Paying Agent, Tender Agent, Remarketing Agent or Registrar, legal fees, expenses and charges, fees, expenses and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of refunding, premiums, fees and expenses of any Credit Provider providing a Credit Facility with respect to any Bonds, financing charges, accrued interest with respect to the initial investment of proceeds of Bonds and any other cost, charge or fee in connection with the original issuance of Bonds.

"Costs of Issuance Fund" means a fund by that name established pursuant to Section 7.01 hereof with respect to a Series of Bonds.

"Costs of Projects" means the costs of acquisition, construction, renovation, repair, equipping and safety upgrading of facilities, buildings and structures; the cost of land, equipment, machinery, furnishings, installation of roads, utilities and other similar items convenient in connection with placing the foregoing into operation for Universities within the State; and costs of financing, interest during construction, professional service fees and all other charges or expenses, necessary, appurtenant or incident to the foregoing, and any other costs permitted to be financed under the Act.

"Credit Facility" means any letter of credit, policy of insurance, guaranty or similar instrument issued by a Credit Provider which secures the payment of the Principal, Purchase Price or Redemption Price of or interest on any Bonds, but shall not include any Reserve Fund Credit Facility.

"Credit Facility Agreement" means any agreement between the Board and a Credit Provider pursuant to the terms of which the Credit Provider delivers a Credit Facility, as amended and supplemented.

"Credit Provider" means any bank, trust company, national banking association, insurance company or other entity which is the issuer of a Credit Facility and, in the case of a Credit Facility for Variable Rate Bonds, which is rated in the highest short term rating category assigned by S&P or Moody's.

"Debt Service" means, with respect to any particular Fiscal Year and any particular Series of Bonds, an amount equal to the sum of (i) all interest payable on such Bonds during such Fiscal Year, plus (ii) any Principal Installments of such Bonds during such Fiscal Year. For purposes of computing "Debt Service," the rate of interest used to determine (i) above shall be a rate per annum equal to (1) with respect to any Series of Bonds which bear interest at a fixed rate, the rate of interest borne or to be borne by such Bonds, and (2) with respect to any Series of Variable Rate Bonds, the rate which is equal to the average of all the interest rates in effect (or which would have been in effect had such Bonds been Outstanding) during the immediately preceding twelve month period.

"Debt Service/Additional Bonds" means, with respect to any Fiscal Year, an amount equal to the aggregate of (i) all interest payable during such Fiscal Year on all Bonds to be Outstanding as of the date immediately after the delivery of the Additional Bonds to be issued, plus (ii) any Principal Installments payable during such Fiscal Year on all Bonds to be Outstanding as of the date immediately after the delivery of the Additional Bonds to be issued. For purposes of computing "Debt Service/Additional Bonds," the rate of interest used to determine (i) above shall be a rate per annum equal to (1)

with respect to any Series of Bonds which bear interest at a fixed rate, the rate of interest borne or to be borne by such Bonds, and (2) with respect to any Series of Variable Rate Bonds, the rate which is equal to the average of all the interest rates in effect (or which would have been in effect had such Bonds been Outstanding) during the immediately preceding twelve (12) month period.

"Debt Service Reserve Fund" means a fund by that name established pursuant to Section 7.01 hereof with respect to a Series of Bonds.

"Debt Service Reserve Requirement" means, as of any date of calculation with respect to any Series of Bonds, the lesser of (i) the amount, if any, specified in the Related Supplemental Resolution, or (ii) an amount not exceeding the amount permitted as a reasonably required reserve under the Code.

"Defeasance Obligations" means cash or noncallable Government Obligations.

"Depository" means DTC, or any bank, trust company, national banking association or other financial institution selected by an Authorized Officer as a depository of securities held under the provisions of this General Resolution.

"DTC" means The Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

"DTC Participant" or "DTC Participants" means securities brokers and dealers, banks, trust companies, clearing corporations and certain other corporations which have access to the DTC System.

"Event of Default" means any of the events specified in Section 9.01 hereof.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of FDIC.

"Fiscal Year" means a twelve-month period commencing on the first day of July of any year, or such other twelve-month period adopted as the Fiscal Year of the Board.

"Fitch" means Fitch Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, "Fitch"

shall be deemed to refer to any other nationally recognized rating agency designated by an Authorized Officer.

"General Resolution" means this General Resolution.

"Government Agency Obligations" means bonds, notes or other evidence of indebtedness issued or guaranteed by, any agency of the United States of America.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, including but not limited to obligations issued by the Resolution Trust Corporation, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Interest Payment Date" means any date upon which interest on any Bonds is due and payable in accordance with their terms and the Related Supplemental Resolution.

"Interest Rate Swap Obligations" means obligations pursuant to any arrangement whereby directly or indirectly, the Board is entitled to receive from time to time periodic payments calculated by applying either a floating or a fixed rate of interest on a stated principal amount in exchange for periodic payments made by the Board to another entity calculated by applying a fixed or a floating rate of interest on the same amount, which arrangement does not constitute an obligation to repay money borrowed, credit extended or the equivalent thereof.

"Letter of Credit" means any letter of credit, line of credit, or other instrument which provides (i) security for payment of Bonds of a Series and (ii) for application of payments thereunder prior to use of amounts on deposit in the funds or accounts established hereunder to the payment of the Principal or Purchase Price of, or interest on the Bonds secured thereby.

"Maximum Rate" means, with respect to any particular Variable Rate Bond, the rate of interest set forth in the Related Supplemental Resolution as the maximum rate of interest such Bond may at any time bear.

"Moody's" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized rating agency designated by an Authorized Officer.

"Original Purchaser" means, with respect to any Series of Bonds, the investment banking firm or firms or other entities first purchasing such Series of Bonds directly from the Board, as shall be determined by a Supplemental Resolution.

"Other Bonds" means any bonds heretofore or hereafter issued by an issuer other than the West Virginia Board of Regents or the Board, the proceeds of which were used to acquire, construct, renovate, improve or equip Universities.

"Outstanding," when used with reference to Bonds, means, as of any date, all Bonds theretofore delivered or thereupon being delivered under this General Resolution except:

(a) Any Bond cancelled by the Registrar or delivered to the Registrar for cancellation after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Any Bond (or portion of a Bond) deemed to be paid within the meaning of Article VIII hereof; and

(c) Any Bond in lieu of or in substitution for which other Bonds shall have been delivered pursuant to Article III hereof.

"Owner," "Holder," "Bondholder," "Registered Owner" or similar term when used with reference to a Bond, means any person in whose name a Bond is registered on the registration books of the Board maintained by the Registrar.

"Paying Agent" means, with respect to any Series of Bonds, the Commission, or such bank, trust company or national banking association appointed to act as paying agent or co-paying agent for a particular Series of Bonds pursuant to the Related Supplemental Resolution.

"Permitted Investments" means the following:

(a) Government Obligations;

(b) Government Agency Obligations;

(c) any other securities which may be applicable to a Series of Bonds as shall be set forth in the Related Supplemental Resolution and approved by the Credit Provider with respect to such Series of Bonds; and

(d) Any State-administered pool investment fund in which the Board is statutorily permitted or required to invest.

"Principal" or "principal" means, with respect to Bonds, the principal amount of any current interest bearing bonds and the Accreted Value of any Capital Appreciation Bonds.

"Principal Installment" means, as of any date of calculation, (i) the aggregate principal amount of Outstanding Bonds due on a certain future date, reduced by the aggregate principal amount of such Bonds which would be retired by reason of the payment when due and application in accordance with this General Resolution of Sinking Fund Payments payable before such future date, plus (ii) any Sinking Fund Payments due on such certain future date, plus (iii) with respect to any Capital Appreciation Bonds due on such certain future date, the Accreted Value of such Capital Appreciation Bonds.

"Principal Payment Date" means, with respect to any Series of Bonds, any date upon which a Principal Installment is due and payable, other than a date for optional or mandatory redemption of Bonds (other than redemption from Sinking Fund Payments).

"Principal Office" means the office of the Paying Agent, the Registrar or any Tender Agent or Remarketing Agent designated as such in a Supplemental Resolution or in a written notice to the Board.

"Prior Bonds" means, collectively, the following bonds heretofore issued by the West Virginia Board of Regents and currently outstanding:

(a) State System Tuition Fee Revenue Bonds, 1977 Series A, dated August 1, 1977, issued in the original aggregate principal amount of $51,700,000;

(b) State System Tuition Fee Revenue Bonds, 1986 Series A, dated May 1, 1986, issued in the original aggregate principal amount of $73,000,000;

(c) Registration Fee Revenue Refunding Bonds, 1989 Series A, dated January 1, 1989, issued in the original aggregate principal amount of $19,395,000; and

(d) Registration Fee Revenue Bonds, 1989 Series B, dated January 1, 1989, issued in the original aggregate principal amount of $50,605,000.

"Project" means with respect to any Series of Bonds, the facilities, buildings, structures, renovations, improvements, repairs, equipment and safety upgrading for Universities within the State as shall be financed by the Board through the issuance of such Series of Bonds.

"Purchase Fund" means with respect to any Variable Rate Bonds, the fund by that name or similar name created pursuant to the Related Supplemental Resolution for the Purchase Price of such Variable Rate Bonds.

"Purchase Price" means an amount equal to the principal amount of any Bond tendered or deemed tendered for purchase as may be provided in any Related Supplemental Resolution, together with accrued and unpaid interest thereon, if any, to the date of purchase.

"Rating Category" means one of the generic rating categories of either Moody's, S&P or Fitch without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

"Record Date" means, with respect to a Series of Bonds, the date or dates set forth as such in the Related Supplemental Resolution.

"Redemption Date" means the date upon which Bonds are to be called for redemption pursuant to this General Resolution.

"Redemption Price" means, with respect to any Bond, the principal amount thereof and accrued interest to the date fixed for redemption, plus the applicable premium, if any, payable upon redemption thereof.

"Refunding Act" means Chapter 13, Article 2G of the Code of West Virginia, 1931, as amended from time to time.

"Refunding Bonds" means any Series or portion of a Series of additional Bonds delivered upon original issuance in accordance with the conditions set forth in Section 2.05 hereof or thereafter delivered in lieu of or in substitution for any such Bond pursuant to this General Resolution.

"Registrar" means the agent of the Board at the office of which Bonds may be presented for registration, transfer or exchange as provided in Article III hereof, and shall mean such bank, trust company or national banking association appointed to act as Registrar for a particular Series of Bonds pursuant to the Related Supplemental Resolution.

"Related Supplemental Resolution" means with respect to a Series of Bonds, the Supplemental Resolution providing for the issuance of such Bonds.

"Remarketing Agent" means any remarketing agent appointed by the Board to serve in such capacity.

"Reserve Fund Credit Facility" means any bond insurance policy, surety bond, letter of credit or similar instrument deposited in a Debt Service Reserve Fund for any Series of Bonds.

"Revenues" means, collectively (i) all tuition and registration fees collected at Universities governed by the Board and earnings thereon, except the following:

(a) tuition fees collected at West Virginia University at Parkersburg and West Virginia University Health Sciences Center, as described in Chapter 18, Article 11, Section 4d of the Code of West Virginia, 1931, as amended; and

(b) tuition and registration fees collected from students enrolled in West Virginia University graduate level extension and graduate level off-campus courses for credit taught off the campus of West Virginia University as described in Chapter 18, Article 11, Section 10 of the Code of West Virginia, 1931, as amended;

(ii) all proceeds of any Bonds deposited with the State Treasury or the Commission and earnings thereon, until expended, and (iii) all other fees, charges, rentals, grants and moneys from any source collected at Universities governed by the Board and earnings thereon, that may now or hereafter be legally available for payment of Debt

Service and that are specifically pledged by resolution of the Board for payment of any Bonds pursuant to a Supplemental Resolution.

"Serial Bonds" means Bonds which are so designated in any Related Supplemental Resolution and which mature in annual or semiannual installments.

"Series" means all of the Bonds delivered on original issuance in a simultaneous transaction and designated as a distinct series, regardless of variations in maturity, interest rate, Sinking Fund Payments or other provisions, and any Bonds thereafter delivered in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

"Series 1992 Bonds" means the Board's State University System Revenue Refunding Bonds, Series 1992.

"Sinking Fund Payment" means, as of any particular date of calculation and with respect to a Series of Bonds, the amount required to be paid by the Board on a certain future date for the retirement of Outstanding Bonds of such Series which mature after said future date, but does not include any amount payable by the Board by reason of the maturity of a Bond or by call for redemption at the option of the Board.

"S&P" means Standard & Poor's Corporation, a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation for any reason no longer performs the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by an Authorized Officer.

"State" means the State of West Virginia.

"State Treasury" means the treasury of the State of West Virginia established pursuant to the Constitution and Laws of the State.

"Supplemental Resolution" means any resolution supplementing or amending this General Resolution, duly adopted by the Board and effective in accordance with Article X hereof.

"Tax Agreement" means the tax agreement, non-arbitrage certificate or similar agreement and/or certificate which may be entered into or delivered by the Board relating to a Series of Bonds.

"Tax-Exempt Bonds" means Bonds of any Series the interest on which, in Bond Counsel's Opinion, is excludable from the gross income of the recipients thereof for federal income tax purposes.

"Tender Agent" means any tender agent appointed by the Board to serve in such capacity.

"Term Bonds" means Bonds subject to mandatory sinking fund redemption as may be set forth and prescribed in any Supplemental Resolution.

"Treasurer" means the Treasurer of the State of West Virginia.

"Universities" means, collectively, the State institutions of higher education under the supervision, management and control of the Board.

"Variable Rate Bonds" means, for any period of time, any Bonds which during such period bear interest at a variable rate or rates, including rates which vary daily, weekly, monthly, quarterly, semiannually, annually or in the form of commercial paper; provided that Bonds the interest rate on which has been fixed for the remainder of the term thereof shall no longer be Variable Rate Bonds.

"West Virginia State Legislature" means the legislature of the State of West Virginia as it shall convene from time to time.

Section 1.03. Interpretation. (a) In this General Resolution, unless the context otherwise requires:

(i) The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms used in this General Resolution refer to this General Resolution, and the term "heretofore" means before, and the term "hereafter" means after, the date of adoption of this General Resolution;

(ii) The words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa;

(iii) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and

other legal entities, including public bodies, as well as natural persons;

(iv) Any headings preceding the texts of the several articles and sections of this General Resolution, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this General Resolution, nor shall they affect its meaning, construction or effect;

(v) This General Resolution shall be governed by and construed in accordance with the applicable laws of the State;

(b) Nothing in this General Resolution expressed or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Board, a Credit Provider and the Owners of the Bonds, any right, remedy or claim under or by reason of this General Resolution or any covenant, condition or stipulation thereof. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the Board shall be for the sole and exclusive benefit of the Board, the Credit Providers and the Owners of the Bonds.

(c) If any one or more of the covenants or agreements provided herein on the part of the Board to be performed should be contrary to law, then such covenant or agreement shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this General Resolution or of the Bonds.

Section 1.04. Findings and Determinations. It is hereby found, determined and declared:

(a) The Board is authorized under the Act and the Refunding Act to issue its Bonds for the purposes of (i) refunding all or any portion of the Prior Bonds, (ii) paying Costs of Projects, (iii) refunding all or any portion of Bonds to be issued pursuant to this General Resolution, and (iv) paying Costs of Issuance.

(b) It is in the best interests of and advantageous to the Board to initially issue a Series of Bonds for the purpose of refunding a portion of the Prior Bonds and paying Costs of Issuance thereof, the designation, terms and other details of such Series of Bonds to be set forth in full in a Supplemental Resolution to be adopted by the Board.

(c) Such Series of Bonds shall be issued by the Board concurrently with the issuance of a similar series of refunding bonds by the College System Board so that, upon the issuance and delivery of all such bonds, and application of other moneys which may be available to the respective boards for such purpose, all Prior Bonds will be refunded and defeased and no longer payable from or secured by the Revenues or any portion thereof.

(d) The Board has complied with all regulations of law relating to issuance of the initial Series of Bonds to be issued hereunder, or will have so complied prior to issuance of any thereof.

(e) The adoption of this General Resolution and the issuance of the initial Series of Bonds to be issued hereunder, subject to the terms thereof, will not result in a breach of, or constitute a default under, any resolution, instrument or agreement to which the Board is a party or by which it may be bound or affected.

Section 1.05. General Resolution Constitutes Contract. In consideration of the purchase and acceptance of any and all of the Bonds issued hereunder by those who shall own or hold the same from time to time, this General Resolution shall be deemed to be and shall constitute a contract between the Board, the Holders of the Bonds and any Credit Providers, and the pledges made in this General Resolution and the covenants and agreements herein set forth to be performed by the Board shall be for the equal benefit, protection and security of the Holders of any and all of the Bonds, all of which, without regard to the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as is expressly provided therein or herein.

ARTICLE II

TERMS OF BONDS

Section 2.01. Authorization of Bonds. In order to provide sufficient funds to pay costs of refunding the Prior Bonds or any portion thereof, Costs of Projects, Costs of Issuance, costs associated with the refunding of Outstanding Bonds or Other Bonds and for any other purpose permitted by the Act, the Refunding Act or other provisions of the Code of West Virginia, 1931, as it may now or hereafter be amended, Bonds of the Board are hereby authorized to be issued hereunder, in one or more Series, pursuant to the Constitution and laws of the State, including, particularly, the Act and the Refunding Act. The Series 1992 Bonds shall be the initial Series of Bonds issued hereunder. Additional Bonds (including Refunding Bonds) may be issued hereunder from time to time in accordance with the provisions hereof. All terms of the Series 1992 Bonds and any Additional Bonds or Refunding Bonds not provided herein shall be as set forth in the Related Supplemental Resolution. This General Resolution constitutes a continuing agreement with the Owners from time to time of the Bonds to secure the full payment of the Principal, Purchase Price and Redemption Price of, and interest on, all such Bonds, subject to the covenants, provisions and conditions herein contained.

Section 2.02. Bonds Limited Obligations. The Bonds issued under this General Resolution are limited obligations of the Board payable solely from the Revenues. No provisions of this General Resolution shall be construed to authorize the Board at any time or in any manner to pledge the credit or taxing power of the State, nor shall any of the obligations or debts created by the Board or issued hereunder be deemed to be obligations of the State.

Section 2.03. Conditions Precedent to Delivery of Bonds. The Bonds of each Series shall be delivered upon the receipt by the Registrar of:

(a) A copy of this General Resolution and the Related Supplemental Resolution authorizing such Series, certified by the Secretary of the Board or an Authorized Officer, by which or pursuant to which the terms of the Series of Bonds are specified;

(b) A Bond Counsel's Opinion to the effect that (i) such Supplemental Resolution has been duly and lawfully adopted and is in full force and effect; (ii) this General Resolution has been duly and lawfully adopted and is valid

and binding upon, and enforceable against, the Board (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); (iii) this General Resolution creates the valid pledge which it purports to create of the Revenues, and moneys and securities on deposit in any of the Funds established hereunder (other than a Purchase Fund, if any) subject to the application thereof to the purposes and on the conditions permitted by this General Resolution; and (iv) upon the execution and delivery thereof, such Bonds will have been duly and validly authorized and issued in accordance with this General Resolution;

(d) A written order as to the authentication, registration and delivery of such Bonds and the application of the proceeds thereof, signed by an Authorized Officer; and

(e) If such Series of Bonds or any portion thereof are Additional Bonds, a Certificate of the Board as set forth in Section 2.04, hereof.

Section 2.04. Additional Bonds. Additional Bonds may be issued pursuant to this General Resolution, provided that all of the requirements of Section 2.03 hereof are met, and in addition that there has first been delivered to the Registrar a Certificate of the Board to the effect that:

(i) all payments into the respective funds and accounts provided for in this General Resolution and any Related Supplemental Resolution respecting Bonds theretofore issued and then Outstanding shall have been made in full to the date of issuance and delivery of such Additional Bonds and no Event of Default hereunder or thereunder shall then be existing; and

(ii) the Revenues of the type set forth in subsection (i) of the definition of "Revenues" in Section 1.02 hereof, collected by the Board for the last Fiscal Year preceding the date of issuance of such Additional Bonds shall have been not less than 120% of the largest amount of Debt Service due in any Fiscal Year thereafter on such Additional Bonds and any Bonds then Outstanding (other than Bonds to be refunded by such Additional Bonds); or

(iii) (a) the Revenues (excluding proceeds of any Bonds and earnings thereon) collected by the Board for the last

Fiscal Year preceding the date of issuance of such Additional Bonds, plus Projected Revenues (as defined below) shall have been not less than 120% of the largest amount of Debt Service due in any Fiscal Year thereafter on such Additional Bonds and any Bonds then Outstanding (other than Bonds to be refunded by such Additional Bonds); (b) the Revenues of the type set forth in subsection (i) of the definition of "Revenues" in Section 1.02 hereof, collected by the Board for the last Fiscal Year preceding the date of issuance of such Additional Bonds shall have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on such Additional Bonds and any Bonds then Outstanding (other than Bonds to be refunded by such Additional Bonds); and (c) Projected Revenues shall not have been greater than 20% of the largest amount of Debt Service due in any Fiscal Year thereafter on such Additional Bonds and any Bonds then Outstanding (other than Bonds to be refunded by such Additional Bonds). For the purposes of this subsection (iii), Projected Revenues may include any Revenues which were not in effect or which were not pledged under this Resolution during the last Fiscal Year, but which have been adopted, charged and pledged prior to or contemporaneously with the issuance of such Additional Bonds.

Section 2.05. Conditions Precedent to Delivery of Refunding Bonds. In addition to the requirements of Sections 2.03 and 2.04, Refunding Bonds of any Series shall be delivered only upon the receipt by the Registrar of instructions as to the payment or redemption of the bonds or other obligations of the Board or the West Virginia Board of Regents to be refunded, together with instructions as to the giving of notice of redemption, if any, of the Bonds or other obligations to be refunded.

Section 2.06. Interest Rate Swap Obligations and Derivatives. The Board is hereby authorized to enter into Interest Rate Swap Obligations and derivative financial instruments, as deemed necessary or desirable by the Board, provided, however, that prior to entering into any such instrument, the Board shall obtain a Bond Counsel's Opinion to the effect that the Board's entering into such instrument will not materially adversely affect the interests of any Bondholder and will not cause the interest on any Tax-Exempt Bond to not be excludable from gross income of the recipient thereof for federal income tax purposes.

ARTICLE III

GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.01. Medium of Payment, Denominations, Maturities, Form and Date. (a) The Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Except as may be provided with respect to a Series of Bonds in a Related Supplemental Resolution, interest on Bonds shall be paid by check or draft mailed by the Paying Agent to the Owners of such Bonds as of the applicable Record Date at their last addresses appearing on the registration books of the Board maintained by the Registrar, or at the option of an Owner of not less than $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date.

(b) All Bonds shall be in Authorized Denominations.

(c) The Principal Payment Dates and Interest Payment Dates on Bonds of any Series shall be established in the Related Supplemental Resolution.

(d) All Bonds shall be issued in fully registered form, without coupons.

(e) To the extent permitted by law and notwithstanding any other provision of this General Resolution, the Board is hereby authorized to provide by Supplemental Resolution for the issuance of one or more Series of Bonds in fully registered form upon the conditions and with the restrictions provided therefor in such Supplemental Resolution. Such Supplemental Resolution shall include but shall not be limited to provisions concerning the medium of payment, denomination, form, date, redemption, purchase, transfer, cancellation and execution of such Series of Bonds.

(f) The Board is hereby authorized to provide by Related Supplemental Resolution for the issuance of one or more Series of Bonds solely in fully registered form registrable to a Depository, a nominee or the beneficial owner of the Bonds. The Board is further authorized to provide by the Related Supplemental Resolution that such Series of Bonds shall be evidenced by one or more certificates or by a system of book entries in form satisfactory to an Authorized Officer and to provide for payment, redemption, notices and like provisions in a manner consistent with such system of registration.

(g) All Bonds shall bear interest at such rate or rates and shall be dated the date specified by the Related Supplemental Resolution. If, however, as shown by the records of the Registrar, interest on such Bonds shall be in default, the Bonds issued in lieu of Bonds surrendered for transfer shall be dated the date to which interest has been paid in full on the Bonds surrendered or if no interest has been paid, from the date specified in the Related Supplemental Resolution.

Section 3.02. Legends. The Bonds of each Series may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this General Resolution as may be necessary or desirable to comply with custom, or otherwise.

Section 3.03. Interchangeability of Bonds. Upon surrender thereof at the Principal Office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or his duly authorized attorney, Bonds may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of Authorized Denominations.

Section 3.04. Negotiability, Transfer and Registry. All Bonds issued under this General Resolution shall be negotiable, subject to the provisions for registration, transfer and exchange contained in this General Resolution and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Board shall cause to be maintained and kept, at the Principal Office of the Registrar, books for the registration, transfer and exchange of Bonds. Upon presentation thereof for such purpose at said office, the Registrar shall register or cause to be registered in such books, and permit to be transferred thereon, any Bonds entitled to registration or transfer, under such reasonable regulations as the Registrar may prescribe.

Section 3.05. Transfer of Bonds. (a) Each Bond shall be transferable only upon the books of the Registrar, by the Owner thereof in person or by his duly authorized attorney, upon surrender thereof with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner thereof or his duly authorized attorney.

(b) The Board and any Paying Agent or Tender Agent may deem and treat the person in whose name any Bond shall be registered upon the books of the Registrar as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such

Bond and for all other purposes, and all such payments so made to any such Owner shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Board nor any Paying Agent or Tender Agent shall be affected by any notice to the contrary.

Section 3.06. Regulations With Respect to Exchanges and Transfers. In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Board shall execute and deliver or cause to be executed and delivered Bonds in accordance with the provisions of this General Resolution. For every such exchange or transfer of Bonds, whether temporary or definitive, the Board, the Paying Agent or the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and, except with respect to the delivery of definitive Bonds in exchange for temporary Bonds, or as otherwise provided herein or a Supplemental Resolution, may charge a sum sufficient to pay the cost of preparing each new Bond issued upon such exchange or transfer, which sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The Board or the Registrar shall not be obliged to make any such exchange or transfer of Bonds of a Series during the period preceding an Interest Payment Date on such Bonds specified in the Related Supplemental Resolution.

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Board shall execute a new Bond of like interest rate or rates, if any, maturity, principal amount and other terms as the Bond so mutilated, destroyed, stolen or lost. In the case of a mutilated Bond, such new Bond shall be delivered only upon surrender and cancellation of such mutilated Bond. In the case of Bonds issued in lieu of and in substitution for a Bond which has been destroyed, stolen or lost, such new Bond shall be delivered only upon filing with the Registrar evidence satisfactory to establish to the Board and the Registrar that such Bond has been destroyed, stolen or lost and to prove the ownership thereof and upon furnishing the Board and the Registrar with indemnity satisfactory to them. The person requesting the delivery of a new Bond pursuant to this Section shall comply with such other reasonable regulations as the Board and the Registrar may prescribe and pay such expenses as the Board and the Registrar may incur or reasonably and customarily charge in connection therewith. All Bonds so surrendered to the Registrar shall be cancelled. Evidence of such cancellation shall be given to the Board upon request.

Section 3.08. Preparation of Definitive Bonds; Temporary Bonds. (a) Until definitive Bonds are prepared, the Board may execute and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, except as to the denominations thereof and as to exchangeability, one or more temporary Bonds, substantially of the tenor of the definitive Bonds in lieu of which such temporary Bonds are issued, with such omissions, insertions and variations as may be appropriate to temporary Bonds. Upon surrender of such temporary Bonds for exchange and cancellation, the Board at its own expense shall prepare and execute and, without charge to the Owner thereof, deliver in exchange therefor, at the Principal Office of the Registrar, definitive Bonds of the same aggregate principal amount, Series and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds issued pursuant to this General Resolution.

(b) All temporary Bonds surrendered in exchange for definitive Bonds shall be forthwith delivered to the Registrar for cancellation.

Section 3.09. Cancellation and Destruction of Bonds. All Bonds paid or redeemed, either at or before maturity shall be delivered to the Registrar when such payment or redemption is made, and such Bonds shall thereupon be promptly cancelled. Bonds so cancelled may at any time be cremated or otherwise destroyed by the Registrar, who shall execute a Certificate of cremation or destruction in duplicate by the signature of one of its authorized officers describing the Bonds so cremated or otherwise destroyed, and one executed Certificate shall be filed with the Board and the other executed Certificate shall be retained by the Registrar.

Section 3.10. Execution. After their authorization by a Related Supplemental Resolution, Bonds of a Series may be executed by or on behalf of the Board and delivered to the purchasers thereof. The Bonds shall be executed in the name and on behalf of the Board by the manual or facsimile signature of the Governor of the State and the manual or facsimile signature of the Chairman of the Board or in such other manner as prescribed by applicable law. The great seal of the State (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon, and attested by the manual or facsimile signature of the Secretary of State of the State, or in such other manner as may be required by law. In case any one or more of the officers or employees who shall have signed or sealed any of the Bonds shall cease to be such officer or employee before the Bonds so signed and sealed shall have been actually delivered, such Bonds may nevertheless be delivered as herein provided, and may be issued as if the person who signed or sealed such Bonds had not ceased to hold

such office or be so employed. Any Bond may be signed and sealed on behalf of the Board by such persons as at the actual time of execution of such Bond of a Series shall be duly authorized or hold the proper office in or employment by the State, although at the date of delivery of the Bonds of such Series such persons may not have been so authorized or have held such office or employment.

ARTICLE IV

APPLICATION OF BOND PROCEEDS AND OTHER MONEYS OF THE BOARD

Section 4.01. Application of Bond Proceeds. Accrued Interest and Premium. A. Except as provided below or in a Related Supplemental Resolution, the proceeds of sale of any Series of Bonds shall initially be deposited in the Bond Proceeds Fund in the State Treasury. Thereafter, such proceeds or portions thereof shall be applied by the Board as follows:

(a) The accrued interest on the Bonds, if any, shall be deposited in the related Bond Fund;

(b) Any capitalized interest authorized by the Related Supplemental Resolution providing for the Bonds shall be deposited in the related Bond Fund;

(c) The amount required to cause the amount on deposit in the related Debt Service Reserve Fund (less any Reserve Fund Credit Facility) to equal the Debt Service Reserve Requirement for such Series of Bonds shall be deposited in such Debt Service Reserve Fund;

(d) The amount, if any, of the premium paid for the purchase of the Bonds shall be applied as required by the Related Supplemental Resolution;

(e) The amount, if any, to be applied to the refunding of Bonds or other obligations of the Board or its predecessor, the Board of Regents or Other Bonds, shall be applied as provided in the Related Supplemental Resolution establishing the issuance of the Refunding Bonds or the issuance of Bonds to refund other obligations of the Board or its predecessor, the Board of Regents or Other Bonds; and

(f) The amount to be applied to Costs of Issuance shall be deposited in the related Costs of Issuance Fund.

B. The balance remaining after such deposits and payments have been made shall be retained in the Bond Proceeds Fund and thereafter shall be disbursed by the State Treasurer (in accordance with applicable law) for payment of Project Costs, at the times and in the respective amounts as shall be determined by the Board.

Section 4.02. Application of Other Moneys. Upon issuance of a Series of Bonds, moneys of the Board which may be available

therefore shall be deposited as provided in the Related Supplemental Resolution authorizing such Series of Bonds or the escrow agreement, if any, authorized thereby.

ARTICLE V

REDEMPTION OF BONDS

Section 5.01. Privilege of Redemption and Redemption Price. Bonds subject to redemption prior to maturity shall be redeemable, upon notice as provided in this Article, at such times, at such Redemption Prices and upon such other terms as may be specified in this General Resolution or in the Related Supplemental Resolution.

Section 5.02. Redemption at the Option of the Board. In the case of any redemption of Bonds other than as provided in Section 5.03 hereof, an Authorized Officer shall give written notice to the Registrar of its election or direction to so redeem, on the Redemption Date, the principal amounts of the Bonds of such Series and maturities to be redeemed (which Redemption Date, Series, maturities and principal amounts thereof to be redeemed shall be determined by the Board in its sole discretion, subject to any limitations with respect thereto contained in or permitted by this General Resolution or the Related Supplemental Resolution) and of any moneys to be applied to the payment of the Redemption Price. Such notice shall be given at least ten (10) days prior to the last permissible date for giving notice of redemption to Owners or such later date as shall be acceptable to the Registrar. In the event notice of redemption shall have been given as provided in Section 5.05 hereof, the Board shall, prior to the Redemption Date, pay or cause to be paid to the Paying Agent, an amount which, in addition to other moneys, if any, available therefor, will be sufficient to redeem on the Redemption Date at the Redemption Price thereof all the Bonds to be redeemed.

Section 5.03. Redemption Other Than at Board's Option. Whenever by the terms of this General Resolution or a Related Supplemental Resolution the Registrar is required to redeem Bonds of a Series other than at the option of the Board, and subject to and in accordance with the terms of this Article and the Related Supplemental Resolution, the Registrar shall select the Redemption Date of the Bonds to be redeemed, give the notice of redemption and pay the Redemption Price to the Owners of the Bonds. The Board may receive a credit against any such obligation to redeem as provided in the Related Supplemental Resolution.

Section 5.04. Selection of Bonds to be Redeemed. In the event of redemption of less than all the Outstanding Bonds of like Series and maturity, the Registrar shall assign to each such Outstanding Bond a distinctive number for each Authorized Denomination of the principal amount thereof so as to distinguish each such Authorized Denomination from each other portion of the Bonds subject

to such redemption. The Registrar shall select by lot, using such method of selection as it shall deem proper in its sole discretion, from the numbers assigned to such Bonds, as many numbers as, at Authorized Denomination for each number, shall equal the principal amounts of such Bonds to be redeemed. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected, but only so much of the principal amount of each such Bond of an Authorized Denomination shall be redeemed as shall equal an Authorized Denomination for each number assigned to it and so selected; provided that Bonds of such Series owned by a Credit Provider or its designee or pledged to a Credit Provider shall be selected before any other Bonds of the Series. For the purposes of this Section, Bonds which have theretofore been selected by lot for redemption shall not be deemed Outstanding.

Section 5.05. Notice of Redemption. When the Registrar receives notice from the Board of its exercise of its option to redeem Bonds pursuant to Section 5.02 hereof, and when redemption of Bonds is required by this General Resolution pursuant to Section 5.03 hereof, the Registrar shall give notice, in the name of the Board, of the redemption of such Bonds. Such notice shall specify the Series and maturities of the Bonds to be redeemed, the Redemption Date and the place or places where amounts due upon such redemption will be payable and, if less than all the Bonds of any like maturity are to be redeemed, the numbers or other distinguishing marks of such Bonds to be redeemed and, in the case of Bonds to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice shall be given by mailing a copy thereof, by first-class mail, postage prepaid, to the Owners of any Bonds or portions of Bonds which are to be redeemed, at their last addresses appearing on the registration books of the Board maintained by the Registrar not more than 60 nor less than 30 days prior to the date fixed for redemption or at such other time or times, provided in the Related Supplemental Resolution. The Registrar, at its discretion, may also give such notice by publication once in an Authorized Newspaper at such time in the Registrar's discretion so as to give sufficient notice to Owners of Bonds to be redeemed, but such publication shall not be a condition precedent to such redemption and failure so to publish any such notice shall not affect the validity of the proceedings for the redemption of Bonds.

Section 5.06. Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 5.05 hereof, the Bonds or portions thereof so called for redemption shall become due and payable on the Redemption Date so designated at the Redemption Price, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the Redemption Price. If there shall be selected for redemption less than the entire principal amount of a Bond, the Board shall execute and deliver or cause to be executed and delivered, upon the surrender of such Bond, without charge to the Owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, Bonds of like Series and maturity in any of the Authorized Denominations. If, on the Redemption Date, moneys for the redemption of all the Bonds or portions thereof of any like Series and maturity to be redeemed, together with interest to the Redemption Date, shall be held by the Paying Agent so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the Redemption Date, interest on the Bonds or portions thereof of such Series and maturities so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the Redemption Date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.01. Payment of Bonds. Subject to the provisions of Section 2.01 hereof, the Board shall duly and punctually pay or cause to be paid, as herein provided, the Principal, Purchase Price or Redemption Price of every Bond and the interest thereon, at the dates and places and in the manner stated in the Bonds, according to the true intent and meaning thereof and shall duly and punctually pay or cause to be paid all Sinking Fund Payments, if any, becoming payable with respect to any of the Bonds.

Section 6.02. Offices for Servicing Bonds. The Board shall at all times maintain an office or agency where notices, presentations and demands upon the Board in respect of the Bonds or of this General Resolution may be served.

Section 6.03. Power to Issue Bonds and Pledge of Revenues.

(a) The Board is duly authorized under the Constitution and laws of the State to authorize and issue the Bonds and to enter into, execute and deliver this General Resolution and to pledge the Revenues in the manner and to the extent herein provided. The Bonds and the provisions of this General Resolution are and will be the valid and legally enforceable obligations of the Board in accordance with the terms of the Bonds and of this General Resolution.

(b) The payment of the Debt Service on all Bonds issued under this General Resolution shall be secured forthwith equally and ratably by a first lien on the Revenues, and the Board hereby pledges the Revenues to payment of the Principal, Purchase Price and Redemption Price of and interest on the Bonds, but the existence of such pledge shall not prevent the expenditure, deposit or commingling of Revenues by the Board so long as all required payments under this General Resolution and any Supplemental Resolution are made at the times and in the amounts specified herein and therein, provided further, however, that the Board shall not commingle any of the Revenues with any revenues of the State College System Board. The Board shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of such Revenues pledged under this General Resolution and all the rights of the Owners under this General Resolution against all claims and demands of all persons whomsoever.

Section 6.04. Further Assurance. At any and all times the Board shall, so far as it may be authorized by law, pass, make, execute, acknowledge and deliver, all and every such further

resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular of the rights, Revenues and assets hereby pledged or assigned, or intended so to be, or which the Board may become bound to pledge or assign.

Section 6.05. Accounts and Reports. (a) The Board shall keep, or cause to be kept, proper books of record and account in which complete and accurate entries are made, which shall at all reasonable times be subject to the inspection of the Registrar and the Owners of an aggregate of not less than five percent (5%) in principal amount of Bonds Outstanding or their representatives duly authorized in writing.

(b) The Board shall annually file with the Registrar and with any Credit Provider, within one hundred twenty (120) days after the close of each Fiscal Year, a copy of an audited annual financial report as to the Revenues and its obligations hereunder and financial statements for such Fiscal Year, setting forth in reasonable detail:

(i) A combined statement of assets, liabilities and fund balance at the end of such Fiscal Year; and

(ii) A statement of revenues collected, expenses and costs paid and changes in fund balance in accordance with the categories or classifications established by the Board for its administrative and program purposes and showing the revenues and expenses during such Fiscal Year.

Such financial statements shall be accompanied by an Accountant's Certificate stating whether the financial statements examined fairly present the financial position of the Board at the end of the Fiscal Year, and whether the results of its operations and the changes in financial position for the period examined are in conformity with the State's modified basis of cash receipts and disbursements which is a comprehensive basis of accounting other than generally accepted accounting principles.

(c) If at any time during any Fiscal Year there shall have occurred an Event of Default referred to in subsection (a) or (b) of Section 9.01 hereof, then the Board shall file or cause to be filed with the Registrar within sixty (60) days after the close of such Fiscal Year, a special report, accompanied by an Accountant's Certificate as to the fair presentation of the financial statements

contained therein, setting forth in reasonable detail the individual balances and receipts and disbursements for each Fund hereunder.

Section 6.06. Debt Service Coverage. The Board shall at all times fix and otherwise provide for the collection of Revenues of the type set forth in subsection 91) of the definition of "Revenues" in Section 1.02 hereof in an amount not less than 100% of the Debt Service payable on all Bonds Outstanding during the then current Budget Period, and Revenues of the type set forth in subsections (i) and (iii) of the definition of "Revenues" in Section 1.02 hereof in an amount not less than 120% of the Debt Service payable on all Bonds Outstanding during the then current Budget Period. To evidence its compliance with this covenant, the Board shall, on or before each November 1, deliver to the Commission, any Credit Provider and each Original Purchaser of any Series of Bonds, a Certificate of an independant certified public accountant reciting that the Board was in compliance with this Section 6.06 hereof during the preceding Budget Period and setting forth the amount of Revenues collected, the amount of Debt Service paid and the percentage Debt Service coverage in effect for such Budget Period.

Section 6.07. Operation and Maintenance. The Board will, so long as any of the Bonds are Outstanding, cause the Universities under its governance to maintain their facilities in good condition and operate the same in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof.

Section 6.08. Insurance. The Board will carry such insurance and in such amounts as is customarily carried with respect to properties similar to the facilities under its governance, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Board will require that each of its contractors and all subcontractors maintain workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance during the construction of any Project. The Board will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to all subcontractors as their interests may appear, during construction of any Project in the full insurable value thereof. The proceeds of all such insurance shall be used only for the repair and restoration of the damaged or destroyed properties. The Board will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the facilities under its governance.

Notwithstanding any of the foregoing, the Board may provide for the insurance required by this Section 6.08 through the State Board of Risk & Insurance Management by any program of self-insurance which the State provides for itself and its agencies.

Section 6.09. Issuance of Additional and Subordinate Obligations. (a) The Board will not issue any other obligations, except upon the conditions and in the manner provided in this General Resolution, payable from the Revenues or any portion thereof and having priority to or being on a parity with the lien of the Bonds issued pursuant to this General Resolution, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority to or being on a parity with the lien of the Bonds issued pursuant to this General Resolution.

(b) Nothing herein provided shall, however, prohibit the issuance by the Board of bonds, notes, certificates or other obligations or indebtedness of every kind and nature, the lien of which on the Revenues is subject to the prior and superior lien on such Revenues of the Bonds theretofore issued and to be issued pursuant to this General Resolution.

Section 6.10. Tax Covenants. (a) The Board shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on Tax-Exempt Bonds shall, for the purposes of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation.

(b) The Board shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Board to be used, directly or indirectly, to acquire any securities or obligations the acquisition of which would cause any Tax-Exempt Bond to be an "arbitrage bond" as defined in Section 148 of the Code or any successor provision.

Section 6.11. General. The Board shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Board under the provisions of this General Resolution in accordance with the terms of such provisions.

Section 6.12. Additional Covenants. The Board may make such additional covenants as it may deem necessary or advisable regarding any particular Series of Bonds in the Related Supplemental Resolution, so long as such additional covenants are not inconsistent with the terms of this General Resolution.

ARTICLE VII

FUNDS AND ACCOUNTS

Section 7.01. Creation of Funds. A. There are hereby created by the Board and ordered established the following funds to be held by the Commission:

(a) A Bond Fund with respect to each Series of Bonds;

(b) A Debt Service Reserve Fund with respect to each Series of Bonds for which the Debt Service Reserve Requirement is greater than zero; and

(c) For any Series of Bonds issued in whole or in part as Variable Rate Bonds, a Purchase Fund if so specified by a Related Supplemental Resolution.

B. There are hereby created by the Board and ordered established the following funds to be held by the State Treasury:

(a) A Bond Proceeds Fund with respect to each Series of Bonds; and

(b) A Costs of Issuance Fund for each Series of Bonds.

C. In addition to the foregoing funds, the Board may establish such other funds and accounts as it may deem appropriate for any particular Series of Bonds by provision therefor in the Related Supplemental Resolution.

Section 7.02. Bond Funds. (a) Revenues sufficient for such purposes shall be applied by the Board in the following order of priority, and except as may otherwise be provided in a Supplemental Resolution, such deposits shall be made semiannually, on the first day of each April and October:

(i) To each Bond Fund, an amount equal to the interest which has accrued since the last Interest Payment Date for the related Series of Bonds to and including the applicable Interest Payment Date and not previously deposited therein, plus an amount equal to one-half of the Principal which shall be due and payable on the applicable Principal Payment Date for the related Series of Bonds and not previously deposited therein;

(ii) To the Commission, Registrar, Paying Agents, Remarketing Agents, Credit Providers, Tender Agents and other agents or fiduciaries for any Series of Bonds, the fees and expenses thereof, payable on or prior to such date;

(iii) On each Interest Payment Date for a Series of Bonds to the applicable Bond Fund, any deficiency in the amount necessary to pay the interest due on such Interest Payment Date;

(iv) On each Principal Payment Date for a Series of Bonds to the applicable Bond Fund, any deficiency in the amount necessary to pay the Principal due on such Principal Payment Date;

(v) To each Debt Service Reserve Fund, the amount required to be deposited therein pursuant to Section 7.04(a) hereof, or the Related Supplemental Resolution authorizing such Series of Bonds; and

(vi) To the applicable Bond Fund, the amount designated by the Board for the optional or mandatory redemption of the related Series of Bonds (other than Sinking Fund Payments).

(b) In the event the Revenues are insufficient during any semiannual or other period to make all of the deposits required by Section 7.02(a) above for all Bonds issued hereunder, the Board shall make payments pro-rata, in accordance with the respective Debt Service Requirements for each Series of Bonds.

Section 7.03. Payments to be Made from Bond Funds. (a) Except as otherwise provided herein or in a Related Supplemental Resolution with respect to a Series of Bonds, moneys on deposit in a Bond Fund for a Related Series of Bonds shall be applied by the Commission in the following order and priority:

(i) On each Interest Payment Date, to payment of interest on all Bonds which has accrued and is payable on such Interest Payment Date;

(ii) On each Principal Payment Date, to payment of Principal on all Bonds which is payable on such Principal Payment Date;

(iii) If such Series of Bonds is secured by a Letter of Credit, to reimburse the Credit Provider for draws made under the Letter of Credit to pay the Principal of or interest on such Series of Bonds.

(b) Funds paid to the Commission to be used to redeem all or a portion of a Series of Bonds pursuant to optional or mandatory redemption provisions contained in a Related Supplemental Resolution (other than redemption from Sinking Fund Payments) shall be deposited in the related Bond Fund and used to pay the Redemption Price of Bonds called for optional or mandatory redemption (other than redemption from Sinking Fund Payments).

(c) Amounts received as a result of a draw under a Letter of Credit securing a Series of Bonds shall be deposited in the related Bond Fund and used solely to pay the principal of, premium, if secured by the Letter of Credit, and interest on the related Series of Bonds due on any Interest Payment Date, Principal Payment Date or date for optional or mandatory redemption of all or a portion of such Series of Bonds to the extent such redemptions are secured by such Letter of Credit.

(d) If any Series of Bonds is secured by a Letter of Credit, the Commission shall first apply amounts on deposit in the applicable Bond Fund to the payment of the principal of, premium, if any (to the extent premium may be secured by the Letter of Credit) and interest due on such Bonds and second, will apply other amounts available for such payment under this General Resolution.

Section 7.04. Debt Service Reserve Funds. (a) There shall be deposited into each Debt Service Reserve Fund the amounts provided in the Related Supplemental Resolution authorizing the applicable Series of Bonds.

(b) Moneys on deposit in a Debt Service Reserve Fund shall be transferred to the Bond Fund relating to the same Series of Bonds on any Interest Payment Date or Principal Payment Date for such Series of Bonds to the extent amounts on deposit in such Bond Fund are insufficient to pay the Debt Service due on the related Series of Bonds on such date and if the related Series of Bonds is secured by a Credit Facility, to reimburse the Credit Provider for amounts paid under the Credit Facility for payment of the principal of and/or interest due on such Series of Bonds. Moneys on deposit in a Debt Service Reserve Fund shall be transferred to the Bond Fund relating to the same Series of Bonds at the direction of the Board for the purpose of paying the last maturing Principal of such Bonds on a Principal Payment Date or if all of the Bonds are being redeemed pursuant to provisions of the Related Supplemental Resolution pursuant to optional or mandatory redemption (other than redemption from Sinking Fund Payments), to such Bond Fund for redemption of such Series of Bonds. If a Reserve Fund Credit Facility is delivered to the Commission for deposit in a Debt Service Reserve Fund and it is necessary to use money in the Debt Service Reserve Fund to satisfy a deficiency in the

applicable Bond Fund, the Commission shall first use any moneys or securities on deposit in such Debt Service Reserve Fund to satisfy such deficiency in the priority described above and second, draw on such Reserve Fund Credit Facility in a timely manner and pursuant to the terms of such Reserve Fund Credit Facility to the extent necessary to satisfy any remaining deficiency. Amounts drawn under any Reserve Fund Credit Facility shall be deposited in the appropriate Account of the applicable Bond Fund.

(c) Unless the Related Supplemental Resolution provides for periodic payments to be made to such Debt Service Reserve Fund or as may otherwise be provided therein, moneys in a Debt Service Reserve Fund shall at all times be maintained in an aggregate amount not less than the Debt Service Reserve Requirement for the applicable Series of Bonds. During any period the amount on deposit in a Debt Service Reserve Fund is less than the related Debt Service Reserve Requirement, all income from the investment of moneys in such Debt Service Reserve Fund shall be retained therein and, unless otherwise provided in the Related Supplemental Resolution, the Board shall restore any deficiency from the first available Revenues transferred in the order of priority described in Section 7.02(a) hereof.

(d) If at any time the amount on deposit in a Debt Service Reserve Fund exceeds the applicable Debt Service Reserve Requirement, the Commission shall, at the direction of the Board, either transfer the amount by which the amount of money on deposit in the Debt Service Reserve Fund exceeds the Debt Service Reserve Requirement to the related Bond Fund or transfer such amount to the Board, if the Board's direction is accompanied by a Bond Counsel's Opinion to the effect that such transfer will not adversely affect the excludability from gross income of the interest on Tax-Exempt Bonds.

(e) In lieu of making a deposit to a Debt Service Reserve Fund in compliance with Section 7.04(a) hereof, or in replacement of any or all moneys then on deposit in a Debt Service Reserve Fund, the Board, with the consent of the Credit Provider for such Series of Bonds, if any, may deliver to the Commission a Reserve Fund Credit Facility in an amount which, together with moneys, Permitted Investments or other Reserve Fund Credit Facilities on deposit in such Debt Service Reserve Fund, equals or exceeds the Debt Service Reserve Requirement. Except as may otherwise be provided in a Related Supplemental Resolution, such Reserve Fund Credit Facility shall name the Commission as beneficiary or insured, shall have a term of no less than one (1) year and shall provide by its terms that it may be drawn upon as provided in this subparagraph (e). At least three months prior to the stated expiration of such Reserve Fund Credit Facility, the Board shall either (i) provide for delivery of a replacement Reserve Fund Credit Facility meeting the requirements of this

subparagraph (e), or (ii) deliver an extension of the Reserve Fund Credit Facility for at least an additional year. Upon delivery of a replacement Reserve Fund Credit Facility, the Commission shall deliver the then-effective Reserve Fund Credit Facility to or upon the order of the Board. If the Board fails to deposit a replacement Reserve Fund Credit Facility or extend the existing Reserve Fund Credit Facility, the Commission shall immediately commence to make monthly deposits from the Bond Fund in accordance with the priority set forth in Section 7.02(a) hereof, so that an amount equal to the applicable Debt Service Reserve Requirement is on deposit in the related Debt Service Reserve Fund no later than the fifteenth (15th) day immediately preceding the stated expiration date of the Reserve Fund Credit Facility. If the amount on deposit in a Debt Service Reserve Fund on the fifteenth day immediately preceding the stated expiration date of such Reserve Fund Credit Facility is less than the Debt Service Reserve Requirement, the Commission shall draw on the Reserve Fund Credit Facility in the amount of such shortfall and shall deposit the proceeds of such drawing in the applicable Debt Service Reserve Fund.

(f) Except as may otherwise be provided in a Related Supplemental Resolution, for the purposes of determining the amount from time to time on deposit in a Debt Service Reserve Fund, Permitted Investments shall be valued semiannually on April 1 and October 1 of each year, commencing April 1, 1993. To the extent such Permitted Investments are United States Treasury Certificates and Notes - State and Local Government Series, such investments shall be valued as if such United States Treasury Certificates and Notes - State and Local Government Series were Open Market United States Treasury Bonds having the same maturities and interest rates.

Section 7.05. Costs of Issuance Funds. The Board shall deposit into the Costs of Issuance Fund relating to a Series of Bonds the amount required to be deposited therein in the Related Supplemental Resolution. The State Treasury is hereby authorized and directed to make disbursements from a Costs of Issuance Fund upon receipt of a Requisition signed by an Authorized Officer. The State Treasury shall keep and maintain adequate records pertaining to each Costs of Issuance Fund and all disbursements therefrom. Any amounts remaining in a Costs of Issuance Fund after receipt of written notice by the Board that all such Costs of Issuance have been paid or six months after their deposit therein, whichever is earlier, shall be transferred by the State Treasury to the Board.

Section 7.06. Nonpresentment of Bonds; Disposition of Unclaimed Money. In the event any Bond shall not be presented for payment when the Principal thereof becomes due on a Principal Payment Date, if funds sufficient to pay any such Bond have been made

available to the Paying Agent for the benefit of the Owner thereof, all liability of the Board to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this General Resolution or on, or with respect to, such Bond.

Any moneys so deposited with and held by the Paying Agent not so applied to the payment of Bonds within five (5) years after the Principal Payment Date on which the same shall have become due shall be repaid by the Paying Agent to the Board upon direction of an Authorized Officer, and thereafter the Owners of Bonds shall be entitled to look only to the Board for payment, and then only to the extent of the amount so repaid, and all liability of the Paying Agent with respect to such money shall thereupon cease, and the Board shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 7.07. Moneys to be Held in Trust. With the exception of moneys in a Bond Purchase Fund, all moneys required to be deposited with or paid to the Commission for the account of any fund or account shall be held by the Commission in trust, and shall, while held by the Commission, be subject to the lien and security interest created hereby.

Section 7.08. Repayment to Board from Funds. Any amounts remaining in a Bond Fund, a Costs of Issuance Fund or a Debt Service Reserve Fund relating to a Series of Bonds after payment in full of the Principal of, premium, if any, and interest on the Bonds of such Series, the fees, charges and expenses of the Commission and any agents thereof, the fees and expenses of any Credit Provider with respect to such Series of Bonds, any Registrar, Paying Agent or any Remarketing Agent and all other amounts required to be paid hereunder with respect to such Series of Bonds shall be disbursed by the Commission to the Board to be used for any lawful purpose of the Board.

Section 7.09. Creation of Additional Funds, Accounts and Subaccounts. The Commission shall, at the written request of the Board, establish such additional funds, accounts and subaccounts within or in addition to any of the funds established under this General Resolution as shall be specified in such written request, for the purpose of identifying more precisely the sources of payments into and disbursements from such funds, accounts and subaccounts; but the establishment of any such additional funds, accounts or subaccounts

shall not alter or modify any of the requirements of this General Resolution with respect to the deposit or use of moneys in any fund, account or subaccount established hereunder.

Section 7.10. Investment of Certain Funds. Any fund or account held by the Board or on behalf of the Board by the Commission or the State Treasury, may be invested and reinvested or deposited in Permitted Investments having yields and maturities as determined by an Authorized Officer.

(b) Subject to the right of an Authorized Officer to direct the investment or deposit of funds hereunder, moneys in any fund or account held by the Commission or the State Treasury shall be continuously invested and reinvested or deposited and redeposited by the Commission or the State Treasury in the highest yield Permitted Investments that may be reasonably known to the Commission or the State Treasury, with a view toward maximizing yield (with proper preservation of principal) and minimizing the instances of uninvested funds. An Authorized Officer shall consult with the Commission or the State Treasury from time to time as to the investment of amounts in the funds and accounts held by the Commission or the State Treasury. An Authorized Officer may direct the Commission or the State Treasury to, or in the absence of direction, the Commission or the State Treasury shall, invest and reinvest the moneys in all funds and accounts in Permitted Investments so that the maturity date or date of redemption at the option of the owner thereof shall coincide as nearly as practicable with the times at which moneys are needed to be so expended. The Permitted Investments purchased shall be held by the Commission or the State Treasury and shall be deemed at all times to be part of such fund or account, and the Commission or the State Treasury shall keep the Board advised as to the details of all such investments.

(c) Permitted Investments purchased as an investment of moneys in any fund or account under the provisions of this General Resolution shall be deemed at all times to be a part of such fund or account, and the income or interest earned and gains realized in excess of losses suffered by a fund or account due to the investment thereof shall be credited thereto.

Section 7.11. Valuation and Sale of Investments. (a) Except as may be provided in a Related Supplemental Resolution with respect to funds and accounts relating to the applicable Series of Bonds, in computing the amount in any fund or account, Permitted Investments shall be valued at the lower of the cost or market price, exclusive of accrued interest. With respect to all funds and accounts except a Debt Service Reserve Fund, valuation shall occur annually. All Debt Service Reserve Funds shall be valued semiannually, except in

the event of a withdrawal from such Debt Service Reserve Fund, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in any Debt Service Reserve Fund shall at any time be less than the applicable Debt Service Reserve Requirement, such deficiency shall be made up from first available moneys after required deposits to the Related Bond Fund.

(b) Except as otherwise provided herein, the Commission or the State Treasury shall sell at the best price obtainable, or present for redemption, any Investment Security whenever it shall be required in writing by an Authorized Officer to do so or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any fund or account held by it, and the Commission or the State Treasury shall sell at the best price obtainable, or present for redemption, any Investment Security whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any fund or account held by the Board. An Investment Security may be credited on a pro-rata basis to more than one fund or account and need not be sold in order to provide for the transfer of amounts from one fund or account to another.

Section 7.12 Disposition of Revenues. Upon receipt of any Revenues by the State Treasury during each January and September, the Board shall retain and not expend for any purpose (other than payment of routine costs associated with the Board's capital improvement program) an amount at least equal to the portion of Debt Service payable on the next semiannual Interest Payment Date.

ARTICLE VIII

DEFEASANCE

Section 8.01. Defeasance. (a) If the Board shall pay or cause to be paid to the Owners of the Bonds the Principal, Purchase Price or Redemption Price, if applicable, and interest and all other amounts due or to become due thereon, at the times and in the manner stipulated therein and in this General Resolution, then the pledge of the Revenues, payments made by the Board in satisfaction of covenants contained herein and other moneys, securities and funds hereby pledged and all other rights granted hereby shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Commission shall, upon the request of the Board, execute and deliver to the Board all instruments as may be desirable to evidence such discharge and satisfaction and shall pay over or deliver to the Board all moneys or securities held by the Commission or the State Treasury pursuant to this General Resolution which are not required for the payment of Bonds. If the Board shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Outstanding Bonds of a particular Series the Principal, Purchase Price or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this General Resolution, then such Bonds shall cease to be entitled to any lien, benefit or security hereunder and all covenants, agreements and obligations of the Board to the Owners of such Bonds shall thereupon cease, terminate and become void and be discharged and satisfied. Payments of Principal and interest on Bonds made by a Credit Provider pursuant to a Credit Facility shall not be deemed to have been paid within the meaning of this Section and such payments shall continue to be due and owing hereunder until paid by the Board within the meaning of this Section and any agreement pursuant to the terms of which such Credit Facility is delivered.

(b) Bonds for the payment of which moneys or securities shall have been set aside and held in trust by the Commission, the State Treasury or an escrow trustee designated by the Board (through deposit by the Board of funds for such payment or otherwise) shall be deemed to have been paid within the meaning and with the effect expressed in paragraph (a) of this Section. All Bonds shall, prior to the maturity or Redemption Date thereof, be deemed to have been paid within the meaning and with the effect expressed in paragraph (a) of this Section if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Board shall have given to the Commission, the State Treasury or escrow trustee, in form satisfactory to it, irrevocable instructions to give notice of redemption of such Bonds (other than Bonds which have been delivered to the Registrar by

the Board and cancelled by the Registrar as provided in paragraph (c) of this Section prior to the mailing of such notice of redemption) on said date as provided in Article V, (ii) there shall have been deposited with the Commission or escrow trustee, Defeasance Obligations (including any Defeasance Obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Commission or escrow trustee at the same time, shall be sufficient to pay when due the Principal or Redemption Price of and interest due and to become due on said Bonds on and prior to the Redemption Date or maturity date thereof, as the case may be, and (iii) in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the Board shall have given the Commission or escrow trustee, in form satisfactory to it, irrevocable instructions to mail, by first class mail, postage prepaid, as soon as practicable, a notice to the Owners of such Bonds as of the date of such deposit that the deposit required by (ii) above has been made and that said Bonds are deemed to have been paid in accordance with this Section and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the Principal or Redemption Price of and interest on said Bonds (other than Bonds which have been delivered to the Registrar by the Board and cancelled by the Registrar as provided in paragraph (c) of this Section prior to the mailing of the notice of redemption referred to in (i) above).

(c) If at any time (i) prior to the maturity date of Bonds deemed to have been paid in accordance with paragraph (b) of this Section which are not to be redeemed prior to their maturity date or (ii) prior to the mailing of the notice of redemption referred to in paragraph b(i) of this Section with respect to Bonds deemed to have been paid in accordance with paragraph (b) of this Section which are to be redeemed on any date prior to their maturity, the Board purchases or otherwise acquires any such Bonds and delivers such Bonds to the Registrar prior to their maturity date or the date of mailing notice of redemption, as the case may be, the Registrar shall immediately cancel all such Bonds so delivered. Such delivery of Bonds to the Registrar shall be accompanied by directions from an Authorized Officer to the Registrar specifying the portion, if any, of such Bonds to be applied against the obligation of the Commission or escrow trustee to pay Bonds deemed paid in accordance with paragraph (b) of this Section upon their maturity date and the portion, if any, of such Bonds to be applied against the obligation of the Commission or escrow trustee to redeem Bonds deemed paid in accordance with paragraph (b) of this Section on any date prior to their maturity. In the event that on any date as a result of any delivery and cancellation of Bonds as provided in this paragraph the total amount

of moneys and Defeasance Obligations held in trust under this Section is in excess of the total amount which would have been required to be set aside in trust on such date in respect of the remaining Bonds in order to satisfy paragraph (b) of this Section, the Commission or escrow trustee shall, if requested by an Authorized Officer, pay the amount of such excess to the Board free and clear of any trust, lien, pledge or assignment securing said Bonds or otherwise existing under this General Resolution provided that the Board also delivers with such request (i) a Bond Counsel's Opinion to the effect that such transfer will not adversely affect the excludability of interest on Tax-Exempt Bonds from the Owners thereof and (ii) an Accountant's Certificate to the effect that the moneys and Defeasance Obligations remaining on deposit are sufficient to pay the principal of or Redemption Price of the remaining Bonds deemed to have been paid. The Commission or escrow trustee shall be entitled to rely upon such opinion and certificate and the same shall be conclusive as to the Commission or escrow trustee.

(d) For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of Defeasance Obligations in accordance with paragraph (b) of this Section, the interest to come due on such Variable Rate Bonds on or prior to their maturity date or redemption date, as the case may be, shall be calculated at the Maximum Rate; provided, however, that if on such date of calculation the interest rate on such Bonds shall then be fixed for a specified period, the interest rate used for such specified period for purposes of the foregoing calculation shall be such actual interest rate; provided further that if on any date, as a result of such Variable Rate Bonds having borne interest at less than such Maximum Rate for any period, the total amount of Defeasance Obligations set aside in trust for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be set aside in trust on such date in respect of such Variable Rate Bonds in order to satisfy paragraph (b) of this Section, the Commission or escrow trustee shall, if requested by an Authorized Officer, pay the amount of such excess to the Board free and clear of any trust, lien, pledge or assignment securing the Bonds or otherwise existing under this General Resolution.

(e) If, through the deposit of moneys by the Board or otherwise, the Commission or escrow trustee shall hold, pursuant to this General Resolution, moneys sufficient to pay the principal of and interest to maturity on all Outstanding Bonds, or in the case of Bonds in respect of which the Board shall have taken all action necessary to redeem prior to maturity, sufficient to pay the Redemption Price and interest to such Redemption Date, then at the request of the Board all

moneys held by the Commission or escrow trustee shall be held by the Commission or escrow trustee for the payment of Outstanding Bonds.

(f) Any cash received from principal of or interest payments on Defeasance Obligations deposited with the Commission or escrow trustee pursuant to this Section, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Defeasance Obligations maturing at times and in amount sufficient to pay when due the principal or Redemption Price of and interest to become due on said Bonds on and prior to such maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Board, as received by the Commission or escrow trustee, free and clear of any trust, lien or pledge.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01. Events of Default. Each of the following events is hereby declared to be an "Event of Default" hereunder:

(a) Failure by the Board to make payment of the Principal or Redemption Price, if any, of any Bond when and as the same shall become due, whether at maturity or upon call for redemption or otherwise;

(b) Failure by the Board to make payment of interest on any of the Bonds when and as the same shall become due;

(c) Failure or refusal by the Board to comply with the provisions of this General Resolution or any Supplemental Resolution, or default by the Board in the performance or observance of any of the covenants, agreements or conditions on its part contained herein, in any Supplemental Resolution or in the Bonds and the continuance of such failure, refusal or default for a period of sixty (60) days after written notice thereof by the Commission, a Credit Provider or the Owners of not less than fifty percent (50%) in Principal amount of the Outstanding Bonds;

(d) A decree or order by a court of competent jurisdiction shall have been entered adjudging the Board a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization or arrangement of the Board under the United States Bankruptcy Code or any other similar applicable federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of ninety (90) days; or a decree or order of a court of competent jurisdiction for the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of the Board or of its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have remained in force undischarged and unstayed for a period of ninety (90) days;

(e) The Board shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or arrangement under the United States Bankruptcy Code or any other similar applicable federal or state law, or shall

consent to the filing of any such petition, or shall consent to the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(f) Any event of default under any Supplemental Resolution.

Section 9.02. Remedies. (a) Upon the happening and continuance of any Event of Default, any Credit Provider or the Owners of not less than fifty percent (50%) in principal amount of the Outstanding Bonds may, by written notice to the Board and each Credit Provider, declare the entire Principal of the Bonds to be due and payable, and upon such declaration, the same shall become due and payable, anything in this General Resolution or the Bonds to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the Principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, (i) the Board pays or deposits with the Commission a sum sufficient to pay all interest due upon all such Bonds and the Principal and premium, if any, of all such Bonds that shall have become due otherwise than by acceleration (with interest on overdue interest and on such Principal and premium, if any, at the rate specified in the Related Supplemental Resolution) and the expenses of the Commission, the Registrar and the Paying Agent, (ii) any and all Events of Default under this General Resolution, other than the nonpayment of Principal of and accrued interest on such Bonds that shall have become due by acceleration, shall have been remedied, and (iii) each Credit Facility is fully reinstated to the coverage amount provided in the Related Supplemental Resolution, such Owners shall, with the consent of each Credit Provider, waive all Events of Default and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or affect any subsequent Event of Default, or shall impair any right consequant thereon. The Owners shall not have the right to waive any Event of Default hereunder, if, at the time of such Event of Default, a Credit Facility is in effect with respect to any Series of Bonds, without the written consent of the Credit Provider to such waiver.

(b) Upon the happening and continuance of any Event of Default, and in addition to the remedy provided in (a) above, the Owners of not less than fifty percent (50%) in aggregate Principal amount of the Bonds Outstanding, may proceed to protect and enforce the rights of the Owners by such of the following remedies, which are

then permitted by law, as they shall deem most effectual to protect and enforce such rights:

(i) By mandamus or other suit, action or proceeding at law or in equity, to enforce all rights of the Owners, including the right to require the Board to receive and collect Revenues adequate to enable the Board to carry out any of the covenants or agreements with Owners and to perform its duties as prescribed by law;

(ii) By bringing suit upon the Bonds;

(iii) By action or suit in equity, to require the Board to account as if it were the trustee of an express trust for the Owners of the Bonds; or

(iv) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

(c) In the enforcement of any rights and remedies under this General Resolution, any Owner shall be entitled to sue for, enforce payment of and receive any and all amounts then, or during any Event of Default becoming, and at any time remaining, due and unpaid from the Board for Principal, interest or otherwise, under any provisions of this General Resolution or a Related Supplemental Resolution or of the Bonds, with interest on overdue payments at the rate of interest specified in the Related Supplemental Resolution, together with any and all costs and expenses of collection and of all proceedings under such General Resolution, Supplemental Resolution or Bonds, without prejudice to any other right or remedy of any other Owners, and to recover and enforce a judgment or decree against the Board for any portion of such amounts remaining unpaid, with interest, costs and expenses (including without limitation pre-trial, trial and appellate attorney fees), and to collect from any moneys available for such purpose, in any manner provided by law, the moneys adjudged or decreed to be payable.

(d) Upon the occurrence of any Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Owners under this General Resolution, the Owners shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and the Funds and Accounts, pending such proceedings, with such powers as the court making such appointment shall confer.

(e) Notwithstanding any provision of this Section 9.02 to the contrary, neither the Commission nor the Owners of any Bond of a Series for which a Credit provider has provided a Credit Facility may undertake any remedies under this General Resolution without the prior written consent of such Credit Provider.

Section 9.03. Priority of Payments After Event of Default. (a) In the event that upon the happening and continuance of any Event of Default the funds held by the Commission shall be insufficient for the payment of the Principal or Redemption Price of and interest then due on the Bonds, such funds (other than funds held for the payment of particular Bonds which have theretofore become due at maturity and amounts representing proceeds of a draw or payment under a Credit Facility) and any other amounts received or collected by the Commission acting pursuant to this Article (other than proceeds or a draw or payment under a Credit Facility), after making provision for the payment of any expenses necessary in the opinion of the Commission to protect the interest of the Owners of the Bonds and for the payment of the charges and expenses and liabilities incurred and advances made by the Commission in the performance of its duties under this General Resolution, shall be applied, subject to Section 9.11, as follows:

(i) Unless the Principal of all of the Bonds shall have become or have been declared due and payable:

FIRST: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amounts available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference;

SECOND: To the payment to the persons entitled thereto of the unpaid Principal or Redemption Price of any Bonds which shall have become due and, if the amounts available shall not be sufficient to pay in full all the Bonds due, then to the payment thereof ratably, according to the amounts of Principal or Redemption Price due on

such date, to the persons entitled thereto, without any discrimination or preference; and

THIRD: To be held for the payment to the persons entitled thereto, as the same shall become due, of the Principal or Redemption Price of and interest on the Bonds which may thereafter become due and, if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, together with such interest, payment shall be made ratably according to the amount of Principal due on such date to the persons entitled thereto, without any discrimination or preference.

(ii) If the Principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the Principal and interest then due and unpaid upon the Bonds without preference or priority of Principal over interest or of interest over Principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for Principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(b) Whenever moneys are to be applied by the Commission pursuant to the provisions of this Section, such moneys shall be applied by the Commission at such times, and from time to time, as the Commission in its sole discretion shall determine, having due regard to the amount of such moneys available for such application and the likelihood of additional money becoming available for such application in the future. The setting aside of such moneys in trust for the proper purpose, shall constitute proper application by the Commission, and the Commission shall incur no liability whatsoever to the Board, to any Owner or to any other person for any delay in applying such moneys, so long as the Commission acts with reasonable diligence, having due regard for the circumstances, and ultimately applies the same in accordance with such provisions of this General Resolution as may be applicable at the time of application by the Commission.

Whenever the Commission shall exercise such discretion in applying such moneys, it shall fix the date (which shall be an Interest Payment Date unless the Commission shall deem another date more suitable) upon which such application is to be made. The Paying Agent shall not be required to make payment to the Owner of any Bond unless such Bond shall be presented to the Registrar for appropriate endorsement or for cancellation if fully paid.

Section 9.04. Termination of Proceedings. In case any proceedings taken by the Commission on account of any Event of Default shall have been discontinued or abandoned for any reason, then in every such case the Board, the Commission, the Credit Providers and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers, and duties of the Commission shall continue as though no such proceeding had been taken.

Section 9.05. Owners' Direction of Proceedings. Anything in this General Resolution to the contrary notwithstanding, the Owners of the majority in principal amount of the Bonds Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Board and the Commission, to direct the method of conducting all remedial proceedings to be taken by the Commission hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions of this General Resolution or a Supplemental Resolution, and that the Commission shall have the right to decline to follow a direction which, in the opinion of the Commission, it is not permitted or authorized to perform under the laws of the State or would be unjustly prejudicial to Owners not parties to such direction.

Section 9.06. Limitation on Rights of Owners. No Owner of any Bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or at law hereunder, for the protection or enforcement of any right under this General Resolution unless such Owner shall have given to the Board, each Credit Provider and the Commission written notice of the Event of Default or breach of duty on account of which such suit, action or proceeding is to be taken, and unless the Owners of not less than fifty percent (50%) in Principal amount of the Bonds Outstanding shall have made written request of the Board and the Commission after the right to exercise such powers or right of action, as the case may be, shall have accrued. Such notifications are hereby declared in every such case, at the option of the Board, to be conditions precedent to the execution of the powers under this General Resolution or for any other remedy hereunder or by law. It is understood and intended that no one or more Owners of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of

this General Resolution, or to enforce any right hereunder or under law with respect to the Bonds or this General Resolution, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all Owners of the Outstanding Bonds. Nothing contained in this Article shall affect or impair the right of any Owner to enforce the payment of the Principal of and interest on his Bonds, or the obligation of the Board to pay the principal of and interest on each Bond issued hereunder to the Owner thereof at the time and place expressed in said Bond.

Section 9.07. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.08. No Waiver of Event of Default. No delay or omission of any Owner of the Bonds to exercise any right or power shall be construed to be a waiver of any such Event of Default or any acquiescence therein and every power and remedy given by this General Resolution to the Owner of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.09. Notice of Event of Default. The Board shall give to the Owners and each Credit Provider notice of each Event of Default hereunder known to the Board within ninety (90) days after actual knowledge of the occurrence thereof, unless such Event of Default shall have been remedied or cured before the giving of such notice; provided that, except in the case of default in the payment of the Principal or Redemption Price of or interest on any of the Bonds, or in the making of any payment required to be made into a Bond Fund, the Board shall be protected in withholding such notice if and so long as the Board in good faith determines that the withholding of such notice from the Owners is in the interest of the Owners. Each such notice to Owners of an Event of Default shall be given by the Board by mailing written notice thereof to all Owners appearing on the registration books of the Board maintained by the Registrar.

Section 9.10. Subordination of Claims for Interest. No claim for interest appertaining to any of the Bonds which in any way at or after maturity shall have been transferred or pledged (other than a Credit Provider upon the payment of such interest and the transfer to such Credit Provider of the right to payment of interest) separate and apart from the Bond to which it appertains shall, unless accompanied by such Bond, be entitled, in case of an Event of Default hereunder, to any benefit by or from this General Resolution, except

after the prior payment in full of the Principal of all of the Bonds then due and of all claims for interest then due not so transferred or pledged.

Section 9.11. Rights of Credit Providers. In the event that the Board provides for the securing of payment of the Principal, Redemption Price of or interest on the Bonds of one or more Series by obtaining a Credit Facility with respect to Debt Service, the Board by Supplemental Resolution or an Authorized Officer by contract with the Credit Provider is authorized to provide appropriate remedies for the Credit Provider upon payment of Debt Service, including, but not limited to, the right to be deemed and treated as the Owner of any Bonds secured by such Credit Facility for all purposes of this Article IX and Article X and for purposes of being given notices or giving directions or consents.

ARTICLE X

SUPPLEMENTAL RESOLUTIONS

Section 10.01. Supplemental Resolution Without Owner Consent. For any one or more of the following purposes and at any time or from time to time, the Board may adopt, execute and deliver a Supplemental Resolution, without notice to or the consent of the Owners of Bonds:

(a) To close this General Resolution against, or provide limitations and restrictions in addition to the limitations and restrictions contained in this General Resolution on the delivery of Bonds or the issuance of other evidences of indebtedness;

(b) To add to the covenants and agreements of the Board in this General Resolution other covenants and agreements to be observed by the Board which are not contrary to or inconsistent with this General Resolution as theretofore in effect;

(c) To add to the limitations and restrictions in this General Resolution other limitations and restrictions to be observed by the Board which are not contrary to or inconsistent with this General Resolution as theretofore in effect;

(d) To surrender any right, power or privilege reserved to or conferred upon the Board by the terms of this General Resolution, but only if the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Board contained in this General Resolution;

(e) To subject to the lien and pledge created or to be created by, this General Resolution any other revenues or assets other than the Revenues;

(f) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this General Resolution;

(g) To insert such provisions clarifying matters or questions arising under this General Resolution as are necessary or desirable and are not contrary to or

inconsistent with this General Resolution as theretofore in effect;

(h) To modify any of the provisions of this General Resolution in any respect whatsoever, if such modification shall be, and be expressed to be, effective only after all Bonds Outstanding and affected thereby at the date of the adoption of such Supplemental Resolution shall cease to be Outstanding;

(i) To authorize the issuance of additional Series of Bonds and to prescribe the terms and conditions upon which such Bonds may be issued;

(j) To provide for the issuance of Bonds in such form as permitted by Section 3.01 hereof, and to make such other provisions as are necessary to provide for Bonds issued in such form;

(k) To modify, alter, amend or supplement this General Resolution in such manner as may be necessary or appropriate to qualify this General Resolution under the Trust Resolution Act of 1939 as then amended, or under any similar federal or state statute hereafter enacted;

(l) To modify, alter, amend or supplement this General Resolution in connection with the issuance of a Series of Bonds which by its terms affects only the proposed Series of Bonds and/or Bonds issued after the date of such Supplemental Resolution, which modification, alteration, amendment or supplement does not change the terms of redemption or maturity of the Principal of any Outstanding Bond or of any installment of interest thereon, or reduce the percentages or otherwise affect the classes of Outstanding Bonds, the consent of the Owners of which is required to effect modifications, alterations, amendments, or supplements to this General Resolution;

(m) To impose a book-entry system for one or more Series of Bonds;

(n) To modify, alter, amend or supplement this General Resolution in any manner which is deemed necessary in Bond Counsel's Opinion to maintain the excludability from gross income of interest on any Tax-Exempt Bonds for federal income tax purposes;

(o) To modify, alter, amend or supplement this General Resolution in any manner which, in Bond Counsel's opinion does not materially adversely affect the interests of the Owners of the Bonds or any Credit Provider; or

(p) To modify, alter, amend or supplement this General Resolution or any Related Supplemental Resolution in any manner which affects only a Series of Bonds which are subject to optional or mandatory tender for purchase, after giving the notice for the period set forth in the Related Supplemental Resolution, if after receipt of such notice, the Owners have the opportunity to tender their Bonds for mandatory or optional tender at the time specified in the Related Supplemental Resolution.

Section 10.02. Supplemental Resolutions With Owner Consent. (a) Any modification of or amendment to this General Resolution and of the rights and obligations of the Board and of the Owners of the Bonds hereunder other than as permitted under Section 10.01 hereof, in any particular, may be made by a Supplemental Resolution, with the written consent given as provided in Section 10.03 hereof (i) of the Owners of at least fifty percent (50%) in Principal amount of the Bonds Outstanding at the time such consent is given and the Credit Provider, if any, (ii) in case less than all of the several Series of Bonds Outstanding are affected by the modification or amendment, of the Owners of at least fifty percent (50%) in Principal amount of the Bonds and the Credit Provider, if any, of each Series so affected and Outstanding at the time such consent is given, and (iii) in case less than all the maturities of a Series of Bonds are affected by the modification or amendment, of the Owners of at least fifty percent (50%) in Principal amount of the Bonds of each maturity and the Credit Provider, if any, so affected and Outstanding at the time such consent is given. If any such modification or amendment will not take effect until certain Bonds shall no longer remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section.

(b) No such modification or amendment shall permit a change in the terms of redemption or maturity of the Principal of any Outstanding Bond or of any installment of interest thereon without the consent of the Owner of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds, the consent of the Owners of which is required to effect any such modification or amendment, or shall change or modify any of the rights or obligations of the Commission or any Credit Provider without its written consent thereto. For the purposes of this Section, a Series shall be deemed to be affected by a modification or amendment of this General Resolution if

the same adversely affects or diminishes the rights of the Owners of Bonds of such Series. The Board may, in its sole discretion, determine whether or not Bonds of any particular Series or maturity would be affected by any modification or amendment made in accordance with the foregoing powers of amendment, provided however, that it first obtain a Bond Counsel's Opinion to such effect. Any such determination shall be binding and conclusive on all Owners of Bonds.

Section 10.03. Consent of Owners. (a) A copy of any Supplemental Resolution making a modification or amendment which is not permitted by the provisions of Section 10.01 hereof (or brief summary thereof or reference thereto), together with a request to Owners for their consent thereto, shall be mailed by the Board to any Owner of Bonds (including any Credit Provider) required to consent thereto by first class mail, postage prepaid. Such Supplemental Resolution shall not be effective unless and until there shall have been filed with the Board (a) the written consents of Owners of the percentages of Outstanding Bonds and consents of the Credit Providers, if any, specified in Section 10.02 hereof, and (b) a Bond Counsel's Opinion provided in Section 10.06 hereof.

(b) Any such consent shall be binding upon the Owner of the Bonds giving such consent and upon any subsequent Owner of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof) unless such consent is revoked in writing by the Owner of such Bonds giving such consent or a subsequent Owner thereof by filing such revocation with the Board, prior to the effective date of such Supplemental Resolution.

(c) At any time after the Owners of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution, such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Board, the Depository Bank and the Owners of all Bonds. Not more than ninety (90) days after the Owners of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution, notice, stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Board on a stated date, a copy of which is on file with the Board) has been consented to by the Owners of the required percentages of Bonds and has become effective as provided in this Section, shall be given to the Owners by the Board by mailing such notice to the Owners first class mail, postage prepaid and may be given, at the discretion of the Board, by contemporaneous publication of the same in an Authorized Newspaper (but failure to publish or give such notice shall not prevent such Supplemental Resolution from becoming effective and binding as provided in this Section). A record, consisting of the

papers required or permitted by this Section to be filed with the Commission, shall be proof of the matters therein stated.

Section 10.04. Modifications by Unanimous Consent. The terms and provisions of this General Resolution and the rights and obligations of the Board and of the Owners of the Bonds hereunder may be modified or amended in any respect upon the adoption and filing by the Board of a Supplemental Resolution and the consent of the Owners of all the Bonds Outstanding, and that of any Credit Provider for such Bonds, such consent to be given as provided in Section 10.03 hereof, but no such modification or amendment shall change or modify any of the rights or obligations of the Commission without the written consent of the Commission thereto. No notice of any such modification or amendment to Owners either by mailing or publication shall be required.

Section 10.05. Exclusion of Bonds. Unless the Board is the Owner of all Bonds required to give consent to a Supplemental Resolution, Bonds owned or held by or for the account of the Board shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, and the Board shall not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article. At the time of any consent or other action taken under this Article, the Board shall furnish to the Commission a Certificate of an Authorized Officer, upon which the Commission may rely, describing all Bonds to be so excluded.

Section 10.06. Bond Counsel's Opinion. No Supplemental Resolution shall be effective until there is filed with the Board a Bond Counsel's Opinion to the effect that the execution and delivery of such Supplemental Resolution is authorized or permitted under this General Resolution and the Act or the Refunding Act, and will not adversely affect the excludability from gross income of the recipients thereof of interest on the Tax-Exempt Bonds for federal income tax purposes.

Section 10.07. Notation on Bonds. Bonds delivered after the effective date of any action taken as provided in this Article may, bear a notation, by endorsement or otherwise in a form approved by the Board, as to such action. Upon any transfer or exchange of any Bond Outstanding at such effective date or upon demand of the Owner of any Bond Outstanding at such effective date and presentation of such Bond, the Registrar, at the direction of the Board, shall make suitable notation as to such action on such Bond or upon any Bond issued upon any such transfer or exchange. If the Board shall so determine, new Bonds modified to conform to such action in the opinion of the Board shall be prepared, executed and delivered, and upon

demand of the Owner of any Bond Outstanding shall be exchanged, without cost to such Owner, upon surrender of such Outstanding Bond.

ARTICLE XI

CONCERNING THE COMMISSION

Section 11.01. The Trust. By its certificate of acceptance delivered to the Board on the date of first delivery of the Bonds issued under this General Resolution, the Commission agrees to hold in trust, for the benefit of the Owners from time to time of the Bonds, all property conveyed or delivered to it under this General Resolution and all funds and accounts and the moneys or Permitted Investments held therein, and to act as Paying Agent and Registrar for the Bonds.

Section 11.02. Responsibility of the Commission. The statements of fact herein and in the Bonds contained shall be taken as the statements of the Board and the Commission does not assume any responsibility for the correctness of the same. The Commission makes no representations as to the validity or sufficiency of this General Resolution or of any Bonds or coupons issued hereunder or in respect of the security afforded by this General Resolution, and the Commission shall not incur any responsibility in respect thereof. The Commission shall not be under any responsibility or duty with respect to the issuance of the Bonds for value or the application of the proceeds thereof or the application of any moneys paid to the Board. The Commission shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own moneys, unless properly indemnified. The Commission shall not be liable in connection with the performance of its duties hereunder except for its own negligence or default.

Section 11.03. Evidence on Which Commission May Act. The Commission shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. The Commission may consult with counsel, who may be counsel to the Board, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. Whenever the Commission shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, including payment of moneys out of any fund or account, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate signed by an Authorized Officer, and such Certificate shall be full warrant for any action taken or suffered in good faith thereon, but in its sole discretion the Commission may in lieu thereof

accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable. Neither the Commission nor any successor to its duties shall be liable to the Board, the Owners of any of the Bonds or any other person for any act or omission done or omitted to be done by the Commission in reliance upon any instruction, direction or certification received by the Commission pursuant to this General Resolution or for any act or omission done or omitted in good faith and without negligence or willful or reckless misconduct. Except as otherwise expressly provided herein, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof by the Board to the Commission shall be sufficiently executed if executed in the name of the Board by an Authorized Officer.

Section 11.04. Compensation. The Board shall pay to the Commission from time to time reasonable compensation as shall be agreed to by the Board and the Commission for all services rendered under this General Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this General Resolution.

Section 11.05. Permitted Acts and Functions. The Commission may become the Owner of any Bonds, with the same rights it would have if it were not the Commission. The Commission may act as Depository for, and permit any of its officers to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this General Resolution, whether or not any such committee shall represent the Owners of a majority in Principal amount of the Bonds Outstanding.

Section 11.06. Resignation of Commission. The Commission may at any time resign and be discharged of the duties and obligations created by this General Resolution by giving not less than forty-five (45) days' written notice to the Board and publishing notice thereof specifying the date when such resignation shall take effect once in an Authorized Newspaper, but such resignation shall not take effect until the appointment of a successor organization to its duties pursuant to Section 11.08 hereof and the acceptance of such duties by such successor.

Section 11.07. Appointment of Paying Agent. The Commission may, with the consent of the Board, appoint one or more Paying Agents to perform any of the obligations and duties of the Paying Agent hereunder by a written instrument executed by the Paying Agent and the Commission under which such Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this General

Resolution and any additional duties or obligations imposed upon it by agreement and shall agree, particularly:

(a) To hold all sums held by it for the payment of the Principal of or interest on Bonds in trust for the benefit of the Owners of such Bonds until such sums shall be paid to such Owners of such Bonds or otherwise disposed of as herein provided;

(b) To keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Board, the Commission, and the Registrar at all reasonable times; and

(c) Upon the request of the Commission, to forthwith deliver to the Commission all sums so held in trust by the Paying Agent.

Section 11.08. Qualifications of Paying Agent. Any Paying Agent other than the Commission shall be a corporation or banking association duly organized under the laws of the United States of America or any state or territory thereof, having a combined capital stock, surplus and undivided profits of at least $25,000,000 or trust assets of not less than $500,000,000 and authorized by law to perform all the duties imposed upon it by this General Resolution.

Section 11.09. Evidence of Signatures of Owners and Ownership of Bonds. (a) Any request, consent or other instrument which this General Resolution may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their duly authorized attorneys. Proof of the execution of any such instrument, or of an instrument appointing any such attorney, shall be sufficient for any purpose of this General Resolution (except as otherwise herein expressly provided) if made in the manner set forth in paragraph (b) of this Section, but the Registrar may nevertheless in their sole discretion require further or other proof in any case where they deem the same desirable.

(b) The fact and date of the execution by any Owner or his attorney of such instrument may be proved by the Certificate, which need not be acknowledged or verified, of an officer of a bank or trust company, financial institution or other member of the National Association of Securities Dealers, Inc. satisfactory to the Board, or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an

affidavit of a witness of such execution, duly sworn to before such notary public or other officer. The authority of the person or persons executing any such instrument on behalf of a corporate Owner may be established without further proof if such instrument is signed by a person purporting to be the president or vice president of such corporation with a corporate seal affixed and attested by a person purporting to be its secretary or an assistant secretary.

(c) The ownership of Bonds and the amount, numbers and other identification, and date of holding the same shall be proved by the registration books of the Board maintained by the Registrar.

(d) Any request, consent or vote of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Board and any Owner and their agents and their representatives, any of whom may make copies thereof.

Section 11.10. Appointment of Registrar. The Board shall appoint one or more Registrars to perform any of the obligations and duties of the Registrar hereunder by designating such Registrar in a Supplemental Resolution or a written instrument executed by the Board. Such Registrar shall signify its acceptance of the duties and obligations imposed upon it by this General Resolution and any additional duties or obligations imposed upon it by agreement.

Section 11.11. Books and Records. The Commission, Registrar and Paying Agent (if other than the Commission) shall make available for inspection by any Authorized Officer and any Credit Provider at all reasonable times, upon reasonable notice, reports, statements and other information relating to all moneys received and disbursed, all investments of such moneys and all funds and accounts established hereunder or by any Supplemental Resolution.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Evidence of Acts of Owners. Any request, direction, consent or other instrument provided hereby to be signed and executed by the Owners of any Bonds may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Board, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(A) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(B) The ownership of all Bonds shall be proved by the register of such Bonds.

Nothing in this Section shall be construed as limiting the Board to the proof herein specified, it being intended that the Board may accept any other evidence of the matters herein stated which it may deem sufficient.

Any action taken or suffered by the Board pursuant to any provision hereof, upon the request or with the assent of any person who at the time is the Owner of any Bond or Bonds shall be conclusive and binding upon all future Owners of the same Bond or Bonds.

Section 12.02. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this General Resolution or the Bonds is intended or shall be construed to give to any person other than the parties hereto, and the Owners of the Bonds any legal or equitable right, remedy or claim under or in respect to this General Resolution or any covenants, conditions and provisions herein contained; this General Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners of the Bonds as herein provided.

Section 12.03. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof, or the Bonds issued pursuant hereto, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

Section 12.04. Holidays. When the date on which Principal of Redemption Price, or interest on any Bond is due and payable is a day other than a Business Day, payment may be made on Bonds on the next ensuing Business day with effect as though payment were made on the due date, and, if such payment is made, no interest shall accrue from and after such due date. When any other action is provided herein to be done on a day named or within a time period named, and the day or the last day of the period falls on a day other than a Business Day, it may be performed on the next ensuing Business Day with effect as though performed on the appointed day or within the specified period.

Section 12.05. Governing Law. This General Resolution and the Bonds are contracts made under the laws of the State of West Virginia and shall be governed and construed in accordance with such laws.

Section 12.06. Notices. A. Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by registered or certified mail, postage prepaid or by overnight courier service and addressed as follows:

(i) If to the Board, addressed to:

University of West Virginia Board
of Trustees
Central Office, State College and
University
Systems of West Virginia
1018 Kanawha Boulevard, East
Charleston, West Virginia 25301
Attention: Chancellor - Board of
Directors of State College System

(ii) If to the Commission, addressed to:

West Virginia Municipal Bond
Commission
1800 Washington Street, East
Building 3, Suite 337
Charleston, West Virginia 25305
Attention: Executive Director

(iii) If to the Treasurer, addressed to:

Treasurer of the State of West Virginia
State Capitol Complex, Suite E-145
Charleston, West Virginia 25305

(iv) If to the Owner of a Bond, addressed to such Owner at the address shown on the books of the Registrar kept pursuant hereto.

B. The Board, the Commission and the Treasurer may from time to time by notice in writing to the others designate a different address or addresses for notice hereunder.

C. In connection with any consent required to be obtained from any Owner of Bonds, the Board shall establish a record date to determine the ownership of any Bonds for purposes of obtaining such consent, and shall give the Depository at least 15 calendar days advance notice of the record date so established.

D. Any notice that is required to be given to Owners of Bonds or to the Commission pursuant to this General Resolution or any Supplemental Resolution shall also be provided to any Credit Provider.

Section 12.07. Counterparts. This General Resolution may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

[Signature Page of State University System General Resolution]

Section 12.08. Immunity of Individuals. No recourse shall be had for the payment of the Principal of, Redemption Price or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement herein against any past, present or future officer, member, employee or agent of the Board, whether directly or indirectly and all such liability of any such individual as such is hereby expressly waived and released as a condition of and in consideration for the execution hereof and the issuance of the Bonds.

Section 12.09. Conflicting Provisions. All resolutions or parts of resolutions or other proceedings of the Board in conflict herewith shall be and the same are repealed insofar as such conflict exists.

Section 12.10. Effective Date. This General Resolution shall take effect immediately.

Adopted this 9th day of September, 1992.

G. Michael Perry
Chairman, University of West Virginia
Board of Trustees

11/25/92
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86555/00000

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Secretary of the University of West Virginia Board of Trustees, does hereby certify that the foregoing General Resolution was duly adopted by the members of the University of West Virginia Board of Trustees at a regular meeting duly held, pursuant to proper notice thereof, on September 9, 1992, at Charleston, West Virginia, a quorum being present and acting throughout, and which General Resolution has not been modified, amended or revoked and is a true, correct and complete copy thereof as witness my hand and the seal of the University of West Virginia Board of Trustees, this 2nd day of December, 1992.

[SEAL]

Secretary, University of West Virginia
Board of Trustees

RECYCLED PAPER
RECYCLABLE

ELEVENTH SUPPLEMENTAL RESOLUTION

Authorizing

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Refunding Bonds
(University Facilities)

Adopted: April 2, 2004

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Refunding Bonds
(University Facilities)

ELEVENTH SUPPLEMENTAL RESOLUTION

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STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Refunding Bonds
(University Facilities)

ELEVENTH SUPPLEMENTAL RESOLUTION OF THE HIGHER EDUCATION POLICY COMMISSION

SUPPLEMENTAL RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $18,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE COMMISSION'S REVENUE REFUNDING BONDS (UNIVERSITY FACILITIES); AND SUPPLEMENTING THE GENERAL RESOLUTION OF THE COMMISSION ADOPTED SEPTEMBER 9, 1992.

WHEREAS, the University of West Virginia Board of Trustees (the "Board") on September 9, 1992, adopted a General Resolution (the "General Resolution") pursuant to which it is authorized to issue one or more series of its revenue bonds (the "Bonds");

WHEREAS, the Higher Education Policy Commission (the "Commission"), an agency of the State of West Virginia (the "State"), is the successor to the Board and is empowered and authorized to issue bonds pursuant to the Act, among other things, in furtherance of the public purposes as found and determined by the Legislature of West Virginia as set forth in Section 5 of the Act, to refund the Bonds To Be Refunded;

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the General Resolution;

WHEREAS, the General Resolution establishes the basic provisions regarding the structure of and security for all Bonds to be issued thereunder, and further provides that each Series of Bonds to be issued from time to time is to be individually authorized by a Supplemental Resolution setting forth the principal amount of such Series of Bonds, the terms and provisions of such Series of Bonds, provisions required by any Credit Provider for such Series of Bonds and any other provisions which may be specific to such Series of Bonds;

WHEREAS, pursuant to the First Supplemental Resolution (the "First Supplemental Resolution") adopted by the Board on September 9, 1992, the Board issued its first Series of Bonds under the General Resolution, being its $101,505,000 aggregate principal amount State University System Revenue Refunding Bonds, Series 1992, dated November 1, 1992 (the "1992 Bonds");

WHEREAS, pursuant to the Second Supplemental Resolution (the "Second Supplemental Resolution") adopted by the Board on January 15, 1993, the Board made a minor

amendment to the First Supplemental Resolution, ratifying a change of the date of the Prior Bonds from September 1, 1992 to November 1, 1992;

WHEREAS, pursuant to the Third Supplemental Resolution (the "Third Supplemental Resolution") adopted by the Board on February 23, 1996, the Board issued its Revenue Refunding Bonds, Series 1996 (Marshall University Library/Information Center) (the "1996 Bonds");

WHEREAS, pursuant to the Fourth Supplemental Resolution (the "Fourth Supplemental Resolution") adopted by the Board on October 31, 1997, the Board issued its Revenue Refunding Bonds (University Improvement Projects) 1997 Series A (the "1997 Bonds");

WHEREAS, pursuant to the Fifth Supplemental Resolution (the "Fifth Supplemental Resolution") adopted by the Board on April 3, 1998, the Board issued its University System Revenue Bonds (West Virginia University Projects), 1998 Series A, dated April 1, 1998 (the "1998 Bonds");

WHEREAS, pursuant to the Sixth Supplemental Resolution (the "Sixth Supplemental Resolution") adopted by the Board on May 22, 2000, the Board issued its University System Revenue Bonds (West Virginia University Projects) 2000 Series A (the "2000 Series A Bonds");

WHEREAS, pursuant to the Seventh Supplemental Resolution (the "Seventh Supplemental Resolution") adopted by the Board on May 22, 2000, the Board issued its University System Revenue Bonds (Marshall University Medical Center) 2000 Series B (the "2000 Series B Bonds");

WHEREAS, pursuant to the Eighth Supplemental Resolution (the "Eighth Supplemental Resolution") adopted by the Board on March 17, 2003, the Board authorized the issuance of its Revenue Refunding Bonds (University Facilities) in an amount not to exceed $105,000,000 (the "2003 Bonds") (the "2003 Bonds" and collectively with the bond issues described in the preceding seven recitals, the "Prior Bonds");

WHEREAS, pursuant to the Ninth Supplemental Resolution (the "Ninth Supplemental Resolution") adopted by the Commission on April 24, 2003, the Commission made certain amendments to the General Resolution;

WHEREAS, pursuant to the Tenth Supplemental Resolution (the "Tenth Supplemental Resolution") adopted by the Commission on June 5, 2003, the Commission made certain amendments to the General Resolution;

WHEREAS, as of the date of adoption of this Eleventh Supplemental Resolution by the Commission, no Bonds other than the Prior Bonds have been issued by the Commission;

WHEREAS, pursuant to the Act, the Commission is authorized to issue certain Additional Bonds to refund all or a portion of the Prior Bonds (the "Bonds To Be Refunded") and pay the Costs of Issuance of such Additional Bonds and otherwise to carry out its purposes under the Act;

WHEREAS, the Commission deems it desirable and in keeping with its purposes under the Act, to issue its Revenue Refunding Bonds (University Facilities) (the "2004 Refunding Bonds"), for the purposes of refunding the Bonds To Be Refunded and paying Costs of Issuance of the 2004 Refunding Bonds;

WHEREAS, all of the requirements set forth in Section 2.03 of the General Resolution for issuance of Bonds and in Section 2.04 of the General Resolution for issuance of Additional Bonds in the manner and in the amount set forth herein have been met or will be met prior to the date of issuance and delivery of the 2004 Refunding Bonds;

WHEREAS, the Commission therefore wishes to take all necessary actions to issue the 2004 Refunding Bonds for the purposes set forth herein;

WHEREAS, there will be presented to the Chairman or Vice Chairman, the following documents (the "Bond Documents"), to be executed in connection with the issuance and sale of the 2004 Refunding Bonds;

(1) A Bond Purchase Agreement to be dated the date of acceptance thereof by the Chairman or Vice Chairman of the Commission, by and between Citigroup Global Markets, Inc., as the original purchaser of the 2004 Refunding Bonds (the "Original Purchaser") and the Commission, pursuant to which the 2004 Refunding Bonds are proposed to be purchased; and

(2) A Continuing Disclosure Agreement (as defined herein), to be dated the Closing Date; and

(3) A Preliminary Official Statement (the "Preliminary Official Statement"), relating to the 2004 Refunding Bonds (which when executed in final form as provided in Section 6.02 hereof, the "Official Statement"); and

(4) A Tax Certificate (the "Tax Certificate"), to be dated the Closing Date; and

(5) An Insurance Commitment if the 2004 Refunding Bonds are insured; and

(6) A Rule 15c-2-12 Certificate; and

(7) An Escrow Agreement; and

(8) Agreements with any Service Provider (as hereinafter defined); and

(9) Any other documents deemed necessary or desirable to aid or effectuate the issuance and sale of the 2004 Refunding Bonds, including documents relating to hedge transactions and investment of the proceeds;

WHEREAS, the Commission desires to take all steps necessary for the issuance of the 2004 Refunding Bonds and the refunding of the Bonds To Be Refunded at the earliest practicable date;

WHEREAS, the Commission wishes to delegate to the Chairman or Vice Chairman, the authority to approve which of the Prior Bonds are to be refunded, the final terms of the 2004 Refunding Bonds, including the exact principal amount, interest rates, redemption provisions, maturities, purchase price and other terms of the 2004 Refunding Bonds, the terms and provisions relating specifically to a Bond Insurance Policy and the final terms and provisions of the Bond Documents and other agreements relating to the 2004 Refunding Bonds, without the requirement of further official action by the Commission; and

WHEREAS, Section 10.01 of the General Resolution provides that the Commission may adopt, execute and deliver a Supplemental Resolution without notice to or consent of the Owners of Bonds to modify, alter, amend or supplement the General Resolution in any manner which in the opinion of Bond Counsel does not materially adversely affect the interest of the Owners of the Bonds or any Credit Provider;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION; DESIGNATION OF AUTHORIZED OFFICERS

Section 1.01. Definitions. All capitalized terms and definitions contained in the General Resolution shall, unless defined differently herein, have the same meanings herein, and in addition to the words and terms defined elsewhere in this Eleventh Supplemental Resolution, the following words, terms or phrases shall have the following respective meanings all unless the context clearly indicates a different meaning:

"Authorized Officer" means the person designated pursuant to Section 1.03 hereof.

"Bond Documents" means the documents described in the 20th recital hereto.

"Bond Insurance Policy" means the policy of municipal bond insurance insuring the payment when due of the principal of and interest on the 2004 Refunding Bonds as provided therein.

"Bond Insurer" means the insurance carrier which issues the Bond Insurance Policy.

"Bond Purchase Agreement" means the Bond Purchase Agreement between the Commission and the Original Purchaser pertaining to the sale of the 2004 Refunding Bonds.

"Bond Year" means, with respect to the 2004 Refunding Bonds, the period commencing July 1 in each year and ending on June 30 of each subsequent calendar year during the term of the 2004 Refunding Bonds, except that the first Bond Year shall commence on the Closing Date and end on June 30, 2004 (unless a different period is permitted or required by the Code).

"Bonds" means collectively, the 2004 Refunding Bonds, the Prior Bonds other than the Bonds To Be Refunded, and any other Additional Bonds or Refunding Bonds hereafter issued pursuant to the General Resolution.

"Certificate of Determination" means the certificate executed by the Chairman or Vice Chairman setting forth the final terms and provisions of the Bonds, the Bond Purchase Agreement and the other Bond Documents as provided in Section 2.03 hereof.

"Closing Date" means the date upon which the 2004 Refunding Bonds are delivered to the Original Purchaser upon payment of the purchase price set forth in the Bond Purchase Agreement.

"Continuing Disclosure Agreement" means a Continuing Disclosure Agreement between the Commission and the Original Purchaser, to be dated the Closing Date.

"Event of Default" means any one or more of those events set forth in Section 9.01 of the General Resolution.

"Eleventh Supplemental Resolution" means this Eleventh Supplemental Resolution as it may be amended or supplemented, and includes all exhibits and schedules thereto.

"Escrow Trustee" means that entity designated as escrow trustee for the Bonds to Be Refunded in the Certificate of Determination.

"Municipal Bond Commission" means the West Virginia Municipal Bond Commission, or its successor, to serve as fiscal agent for the 2004 Refunding Bonds.

"Official Statement" means the Official Statement to be dated the date of execution of the Bond Purchase Agreement, prepared and distributed in connection with the sale of the 2004 Refunding Bonds and approved by the Commission.

"Paying Agent" means such banking institution with offices in West Virginia or its successors, designated as a paying agency or place of payment for the 2004 Refunding Bonds in the Certificate of Determination.

"Preliminary Official Statement" means the Preliminary Official Statement to be prepared and distributed in connection with the sale of the 2004 Refunding Bonds.

"Record Date" means 15 days before the interest payment dates of April 1 and October 1.

"Registrar" means such banking institution with offices in West Virginia or its successors, designated as registrar for the 2004 Refunding Bonds in the Certificate of Determination.

"Representation Letter" means the DTC Blanket Letter of Representations in form satisfactory to DTC, previously delivered to DTC in connection with the issuance and delivery of the 2004 Refunding Bonds.

"Resolution" means (unless the context clearly indicates otherwise) collectively, the General Resolution and this Eleventh Supplemental Resolution as they may be amended or supplemented.

"Service Provider" means a party described in clause (x) of Section 2.03 hereof.

"Tax Certificate" means the Tax Certificate of the Commission to be dated as of the Closing Date, as it may be amended or supplemented.

"Trustee" means such banking institution with offices in West Virginia or its successors, as may be designated as trustee for the 2004 Refunding Bonds in the Certificate of Determination.

"2004 Refunding Bonds" means the Commission's Revenue Refunding Bonds (University Facilities), in such aggregate principal amount (not to exceed $18,000,000) as shall be set forth in the Certificate of Determination.

"2004 Refunding Bonds (University Facilities) Bond Proceeds Fund" means the fund by the name established pursuant to Section 4.01 hereof.

"2004 Refunding Bonds (University Facilities) Escrow Fund" means the fund by that name established pursuant to Section 4.01 hereof.

"2004 Refunding Bonds (University Facilities) Costs of Issuance Fund" means the fund by that name established pursuant to Section 4.01 hereof.

"2004 Refunding Bonds (University Facilities) Interest Account" means the account by that name established in the 2004 Bond (University Facilities) Fund pursuant to Section 4.01 hereof.

"2004 Refunding Bonds (University Facilities) Principal Account" means the account by that name established in the 2004 Bond (University Facilities) Fund pursuant to Section 4.01 hereof.

"2004 Refunding Bonds (University Facilities) Redemption Account" means the account by that name established pursuant to Section 4.01 hereof.

Section 1.02. Interpretation. A. Any reference herein to the Commission, or any officer thereof shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

B. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine and feminine gender.

C. Any terms not defined herein but defined in the General Resolution, shall have the same meanings herein.

D. Headings or articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

E. Words importing the redemption of a 2004 Bond or the calling of a 2004 Bond for redemption do not mean or include the payment of a 2004 Bond at its stated maturity or the purchase of a 2004 Bond.

Section 1.03. Designation of Authorized Officers. The Commission hereby designates the Chancellor and the Director of Finance and Facilities, as Authorized Officers of the Commission with respect to the 2004 Refunding Bonds. Each of such Authorized Officers shall file a specimen of his signature with the Trustee (if any), Registrar and Paying Agent.

ARTICLE II

AUTHORIZATION AND TERMS OF 2004 REFUNDING BONDS

Section 2.01. Authorization of 2004 Refunding Bonds. In order to refund the Bonds To Be Refunded and to pay Costs of Issuance thereof, the Commission hereby authorizes the issuance of one or more series of the 2004 Refunding Bonds, each of which shall constitute a "Series of Bonds" and "Additional Bonds" as such terms are defined in the General Resolution, and shall be issued and sold as directed by the Commission in accordance herewith.

Section 2.02. Terms. The 2004 Refunding Bonds shall be issued in fully registered form as herein provided, in denominations of $5,000 and integral multiples thereof, in an aggregate principal amount not to exceed $18,000,000. The 2004 Refunding Bonds shall be numbered from R-1 upward in order of maturity. Interest accruing on the 2004 Refunding Bonds on and prior to the maturity date thereof shall be payable by check or draft mailed by the Paying Agent to the Registered Owner thereof as of the applicable Record Date (15 days before the interest payment dates of April 1 and October 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by the Registrar, or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent.

Section 2.03. Certificate of Determination. The Chairman or Vice Chairman shall have the power and authority to execute and deliver the Certificate of Determination, which may include, without limitation, provisions (i) fixing the aggregate principal amount of 2004 Refunding Bonds to be issued, not to exceed $18,000,000, (ii) fixing the maturity schedule for the 2004 Refunding Bonds, including the amounts of serial bonds and term bonds, such maturities to be not after April 1, 2020, (iii) prescribing the method of determining the interest rates or yields for such 2004 Refunding Bonds, such rates or yields not to exceed an average interest cost of six percent (6%) per annum, (iv) fixing the amounts and times of mandatory redemption for the 2004 Refunding Bonds, (v) fixing optional redemption provisions for the 2004 Refunding Bonds, including times and redemption prices (not to exceed 102% of the principal amount), (vi) fixing the purchase price for the 2004 Refunding Bonds, which may include an underwriting and an original issue discount or premium, (vii) dating such 2004 Refunding Bonds, (viii) determining whether the 2004 Refunding Bonds shall be issued in one or more series and assigning a designation to each such series, (ix) designating the provider of the Bond Insurance Policy, provided that the cost thereof does not exceed one percent (1%) of the principal amount of the 2004 Refunding Bonds, (x) designating a remarketing agent, a tender agent, an auction agent, a liquidity provider, a credit provider and the provider of other services which may be deemed by such officer as necessary or desirable to support the 2004 Refunding Bonds (each a "Service Provider"), (xi) designating the Bonds To Be Refunded, (xii) designating the Escrow Trustee, (xiii) determining the necessity of having a Trustee for the 2004 Refunding Bonds, and (xiv) designating the Trustee (if deemed necessary), Registrar and Paying Agent for the 2004 Refunding Bonds.

Section 2.04. Book Entry System for 2004 Refunding Bonds.

(a) Notwithstanding the foregoing provisions of this Article II, the 2004 Refunding Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the 2004 Refunding Bonds of each maturity, which 2004 Refunding Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Except as provided in paragraph (g) below, all of the 2004 Refunding Bonds shall be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC; provided that if DTC shall request that the 2004 Refunding Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the 2004 Refunding Bonds for an equal aggregate principal amount of 2004 Refunding Bonds registered in the name of such nominee or nominees of DTC. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a 2004 Bond or any other evidence of ownership of the 2004 Refunding Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the 2004 Refunding Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph (g) below or otherwise.

(b) So long as the 2004 Refunding Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the Principal or Redemption Price of or interest on such 2004 Refunding Bonds shall be made to DTC or its nominee in Federal funds on the dates provided for such payments under this Resolution or as set forth in the 2004 Refunding Bonds. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer or the Registrar with respect to the Principal or Redemption Price of or interest on the 2004 Refunding Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the 2004 Refunding Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC or its nominee of the 2004 Refunding Bonds so redeemed, but DTC (or its nominee) may retain such 2004 Refunding Bonds and make an appropriate notation on the 2004 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption and thereafter the records maintained by the Registrar shall be conclusive as to the amount of the 2004 Refunding Bonds of such maturity which have been redeemed.

(c) The Issuer and the Registrar may treat DTC (or its nominee) as the sole and exclusive Owner of the 2004 Refunding Bonds registered in its name for the purposes of payment of the Principal or Redemption Price of or interest on the 2004 Refunding Bonds, selecting the 2004 Refunding Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Resolution, registering the transfer of 2004 Refunding Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any participant in DTC, any person claiming a beneficial ownership interest in the 2004 Refunding Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder, with respect to either: (1) the 2004 Refunding Bonds; or (2) the accuracy of any records maintained by DTC or

any such participant; or (3) the payment by DTC or any such participant of any amount in respect of the Principal or Redemption Price of or interest on the 2004 Refunding Bonds; or (4) any notice which is permitted or required to be given to Bondholders under this Resolution; or (5) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the 2004 Refunding Bonds; or (6) any consent given or other action taken by DTC as Bondholder.

(d) So long as the 2004 Refunding Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all notices required or permitted to be given to the Bondholders under this Resolution shall be given to DTC as provided in the Representation Letter.

(e) In connection with any notice or other communication to be provided to Bondholders pursuant to this Resolution by the Issuer or the Registrar with respect to any consent or other action to be taken by Bondholders, DTC shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action, provided that the Issuer or the Registrar may establish a special record date for such consent or other action. The Issuer or the Registrar shall give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

(f) At or prior to settlement for the 2004 Refunding Bonds, the Issuer and the Registrar shall execute or signify their approval of the Representation Letter. Any successor Registrar shall, in its written acceptance of its duties under this Resolution, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

(g) The book-entry system for registration of the ownership of the 2004 Refunding Bonds may be discontinued at any time if either: (1) DTC determines to resign as securities depository for the 2004 Refunding Bonds; or (2) the Issuer determines that continuation of the system of book-entry transfers through DTC (or through a successor securities depository) is not in the best interests of the Issuer. In either of such events (unless in the case described in clause (2) above, the Issuer appoints a successor securities depository) the 2004 Refunding Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the 2004 Refunding Bonds.

Section 2.05. Form of 2004 Refunding Bonds. The definitive 2004 Refunding Bonds shall be in substantially the form set forth in Exhibit A, attached hereto and incorporated by reference herein, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such 2004 Refunding Bonds on behalf of the Commission. Execution thereof by such officers shall constitute conclusive evidence of such approval.

Section 2.06. 2004 Refunding Bonds on Parity with Prior Bonds. The 2004 Refunding Bonds shall be on a parity with the Prior Bonds with respect to sources of and security for payment and in all other respects.

Section 2.07. Conditions Precedent to Delivery of 2004 Refunding Bonds. The 2004 Refunding Bonds shall be delivered upon receipt by the Registrar of the following:

A. A copy of the General Resolution and the Eleventh Supplemental Resolution certified by the Secretary of the Commission;

B. A copy of the Certificate of Determination;

C. A Bond Counsel's Opinion to the effect that (i) this Eleventh Supplemental Resolution has been duly and lawfully adopted and is in full force and effect; (ii) the General Resolution has been duly and lawfully adopted and is valid and binding upon, and enforceable against, the Commission (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); (iii) the General Resolution creates the valid pledge which it purports to create of the Revenues, and moneys and securities on deposit in any of the Funds established thereunder (other than a Purchase Fund, if any) subject to the application thereof to the purposes and on the conditions permitted by the General Resolution; and (iv) upon the execution and delivery thereof, the 2004 Refunding Bonds will have been duly and validly authorized and issued in accordance with the General Resolution;

D. A written order as to the authentication, registration and delivery of the 2004 Refunding Bonds and the application of the proceeds thereof, signed by an Authorized Officer;

E. A Certificate of the Commission to the effect that:

(i) all payments into the respective funds and accounts provided for in the General Resolution and any Related Supplemental Resolution respecting Bonds theretofore issued and then Outstanding have been made in full to the date of issuance and delivery of the 2004 Refunding Bonds and no Event of Default under the General Resolution or any Related Supplemental Resolution is now existing; and

(ii) the Revenues of the type set forth in subsection (i) of the definition of "Revenues" in Section 1.02 of the General Resolution, collected by the Commission for the last Fiscal Year preceding the date of issuance of the 2004 Refunding Bonds have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 Refunding Bonds and the Prior Bonds; or

(iii) the Revenues (excluding proceeds of any Bonds and earnings thereon) collected by the Commission for the last Fiscal Year preceding the date

of issuance of the 2004 Refunding Bonds, plus Projected Revenues (as defined below) have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 Refunding Bonds and the Prior Bonds; and (b) Projected Revenues have not been greater than 20% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 Refunding Bonds and the Prior Bonds. For the purposes of this subsection (iii), Projected Revenues may include any Revenues which were not in effect or which were not pledged under the General Resolution during the last Fiscal Year, but which have been adopted, charged and pledged prior to or contemporaneously with the issuance of the 2004 Refunding Bonds; and

F. An executed copy of the Trust Indenture, or if no Trustee has been appointed, a copy of the Agreement between the Commission and the Registrar and Paying Agent.

ARTICLE III

PROVISIONS RELATING TO THE 2004 REFUNDING BONDS REQUIRED BY BOND INSURER

Section 3.01. Provisions Required by Bond Insurer. All provisions and terms required by the Bond Insurer for the 2004 Refunding Bonds shall be set forth separately in a schedule (the "Insurance Schedule") to the Certificate of Determination. In the event any provision of the Certificate of Determination, including such Insurance Schedule, conflicts with any terms and provisions of the Resolution, the terms and provisions of the Certificate of Determination, including such schedule, shall control.

ARTICLE IV

FUNDS AND ACCOUNTS; APPLICATION OF 2004 BOND PROCEEDS

Section 4.01. Funds and Accounts. (A) There are hereby created by the Commission and ordered established with the Trustee (if any), Registrar and Paying Agent the following funds and accounts in connection with the 2004 Refunding Bonds;

(i) 2004 Bond Fund (University Facilities), and therein;

(a) 2004 Refunding Bonds (University Facilities) Interest Account; and

(b) 2004 Refunding Bonds (University Facilities) Principal Account; and

(c) 2004 Refunding Bonds (University Facilities) Redemption Account.

(B) There are hereby created by the Commission and ordered established with the Trustee (if any), Registrar and Paying Agent the following funds in connection with the 2004 Refunding Bonds;

(i) 2004 Refunding Bonds (University Facilities) Bond Proceeds Fund; and

(ii) 2004 Refunding Bonds (University Facilities) Escrow Fund; and

(iii) 2004 Refunding Bonds (University Facilities) Costs of Issuance Fund.

Section 4.02. Application of 2004 Bond Proceeds. The net proceeds of the sale of the 2004 Refunding Bonds shall initially be deposited in the 2004 Refunding Bonds (University Facilities) Bond Proceeds Fund to be held by the Trustee (if any), and if none by the Municipal Bond Commission. Thereafter, such proceeds or portions thereof shall be applied by the Trustee (if any), and if none by the Municipal Bond Commission, as follows:

(i) All amounts, if any, paid as accrued interest on the 2004 Refunding Bonds from their date to the date of delivery of the 2004 Refunding Bonds shall be deposited in the 2004 Refunding Bonds (University Facilities) Interest Account;

(ii) A sum equal to the Costs of Issuance of the 2004 Refunding Bonds shall be deposited in the 2004 Refunding Bonds (University Facilities) Costs of Issuance Fund;

(iii) A sum equal to the premium for purchase of the Bond Insurance Policy, if any, shall be paid directly to the Insurer; and

(iv) The balance of the proceeds of the 2004 Refunding Bonds shall be deposited in the 2004 Refunding Bonds (University Facilities) Escrow Fund (which Fund may contain one or more subaccounts).

Section 4.03. Flow of Funds. So long as any 2004 Refunding Bonds are Outstanding, amounts deposited and to be deposited in the funds and accounts established by Section 4.01 hereof shall be applied by the Trustee (if any), and if none by the Municipal Bond Commission in the manner and order of priority as set forth herein and in Article VII of the General Resolution.

Section 4.04. Disbursements. The proceeds of the 2004 Refunding Bonds deposited in the 2004 Refunding Bonds (University Facilities) Escrow Fund shall be disbursed immediately to the Escrow Trustee. The proceeds of the 2004 Refunding Bonds deposited in the 2004 Refunding Bonds (University Facilities) Costs of Issuance Fund with the Trustee (if any), and if none by the Municipal Bond Commission, shall be disbursed to the Escrow Trustee solely to pay the Costs of Issuance of the 2004 Refunding Bonds. The funds in the 2004 Refunding Bonds (University Facilities) Cost of Issuance Fund shall be disbursed upon requisition by an Authorized Officer. Any funds remaining in the 2004 Refunding Bonds (University Facilities) Costs of Issuance Fund 180 days after the initial issuance of the 2004 Refunding Bonds shall be transferred to the 2004 Refunding Bonds (University Facilities) Interest Account.

Section 4.05. Arbitrage Covenant. Neither the Trustee (if any), and if none by the Municipal Bond Commission, nor the Commission shall use or direct or permit the use of any moneys of the Commission in its possession or control in any manner which would cause any 2004 Refunding Bonds to be an "arbitrage bond" within the meaning of such term in Sections 103 and 148 of the Code.

Section 4.06. Tax Certificate. Notwithstanding any provision of the Resolution, the Commission shall observe its covenants, representations and agreements contained in the Tax Certificate. In the event any provision of the Resolution conflicts with any provision of the Tax Certificate, the provisions of the Tax Certificate shall govern.

ARTICLE V

GENERAL COVENANTS OF THE COMMISSION

Section 5.01. General. Except to the extent amended or modified by Section 1.03 hereof, the covenants contained in Article VI of the General Resolution are hereby continued, approved, ratified and confirmed, shall apply fully to the 2004 Refunding Bonds, and are incorporated herein by reference as a part hereof.

Section 5.02. Covenants. All covenants, stipulations, obligations and agreements of the Commission contained herein and contained in the Resolution shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Commission to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Commission and its successors from time to time and upon any Commission or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Commission or the officials thereof by the provisions hereof and by the Resolution shall be exercised or performed by the Commission or by such officers, or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the 2004 Refunding Bonds or the Bond Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Commission in his or her individual capacity, and neither the member of the Commission nor any officer executing the 2004 Refunding Bonds shall be liable personally on the 2004 Refunding Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

ARTICLE VI

APPROVAL OF DOCUMENTS AND APPOINTMENT OF FIDUCIARIES

Section 6.01. Approval of Bond Documents. The Chairman or Vice Chairman is authorized, for and on behalf of Commission, to approve the final terms of the 2004 Refunding Bonds within the financing parameters established by Section 2.03 of this Resolution, and to negotiate, execute and deliver all documentation related to the issuance of the 2004 Refunding Bonds, including without limitation the Bond Documents, bond insurance documentation, any agreement with any Service Provider, any interest and other rate exchange agreements, interest or other rate swap transactions, basis swap transactions, forward rate transactions, bond options, interest rate options, cap transactions, floor transactions, collar transactions, investment agreements, guaranteed investment contracts, debt service deposit agreements, float agreements, any other similar transactions or agreements (including without limitation any option with respect to any of the foregoing) or any combination of the foregoing upon the terms and conditions as such officers may approve, such approval to be conclusively evidenced by the execution of such documents by any of such officers.

Section 6.02. Approval of Distribution of Preliminary Official Statement and Official Statement. The distribution of the Preliminary Official Statement is hereby approved. The Chairman, Vice Chairman or the Secretary is hereby authorized and directed to execute and deliver a final Official Statement on behalf of the Commission, which shall be in substantially the form of the Preliminary Official Statement with such terms and conditions as may be required to reflect the terms of the sale of the Bonds and as the Chairman, Vice Chairman or Secretary, as the case may be, may approve. The execution of the Official Statement by the Chairman, Vice Chairman or Secretary, as the case may be, shall be conclusive evidence of such approval. Copies of the Official Statement are hereby authorized to be prepared and furnished to the Original Purchaser for distribution. The distribution by the Original Purchaser of the Preliminary Official Statement (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved.

Section 6.03. Appointment of Fiduciaries. The Certificate of Determination shall appoint and designate the Trustee (if any), Registrar and Paying Agent for the 2004 Refunding Bonds, and the Escrow Trustee for the Bonds to Be Refunded.

Section 6.04. Continuing Disclosure Agreement. So long as any of the 2004 Refunding Bonds remain Outstanding, the Commission shall provide certain annual financial information and material events notices regarding the Commission as described in paragraph (b)(5)(i) of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission. The Issuer authorizes and directs the Director of Finance and Facilities to take all actions with respect to this undertaking as prescribed by the Continuing Disclosure Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. General Resolution. This Eleventh Supplemental Resolution is supplemental to the General Resolution and all provisions of said General Resolution, unless clearly inapplicable or altered hereby, shall apply to the 2004 Refunding Bonds, this Eleventh Supplemental Resolution and matters relating thereto as if set forth verbatim herein. In the event of any conflict between the General Resolution and this Eleventh Supplemental Resolution, this Eleventh Supplemental Resolution shall control. This Eleventh Supplemental Resolution, the General Resolution, the Bond Indenture and the Certificate of Determination, to the extent applicable, shall and must be read as a single document and shall supersede all prior resolutions, orders and understandings, both written and oral, by the Commission, with respect to the subject matter hereof.

Section 7.02. Incidental Action. The execution and delivery of the 2004 Refunding Bonds and the execution, delivery and due performance of the Bond Documents and the Official Statement are hereby in all respects approved, authorized, ratified and confirmed including all acts heretofore taken in connection with the issuance of the 2004 Refunding Bonds, and it is hereby ordered that the Chairman, Vice Chairman, Secretary and other members and officers of the Commission execute and deliver such other documents, certificates, agreements and instruments, and take such other Action as may be required or desirable to carry out the purposes of this Eleventh Supplemental Resolution, the 2004 Refunding Bonds and the aforesaid instruments, including, but limited to, execution and delivery of any commitment for bond insurance.

Section 7.03. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof, or the 2004 Refunding Bonds issued pursuant hereto, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

Section 7.04. Governing Law. This Eleventh Supplemental Resolution and the 2004 Refunding Bonds are contracts made under the laws of the State of West Virginia and shall be governed and construed in accordance with such laws.

Section 7.05. Notices. (A) Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall, be deemed sufficiently given or served if given in writing, mailed by registered or certified mail, postage prepaid or by overnight courier service and addressed as follows:

(i) IF TO THE COMMISSION, ADDRESSED TO:

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Charleston, West Virginia 25301

Attention: Director of Finance and Facilities

(ii) IF TO THE TRUSTEE (if any), REGISTRAR OR PAYING AGENT ADDRESSED TO: As it may appear in the Certificate of Determination

(iii) IF TO THE OWNER OF A 2004 BOND, ADDRESSED TO: Such Holder at the address shown on the books of the Registrar kept pursuant hereto

(iv) IF TO THE ORIGINAL PURCHASER, ADDRESSED TO:

Citigroup Global Markets, Inc.
One Liberty Place
1650 Market Street, 45th Floor
Philadelphia, PA 19103
Attn: Public Finance Group

(v) IF TO BOND INSURER, ADDRESSED TO: As its address may appear in the Bond Insurance Policy

(vi) IF TO THE ESCROW TRUSTEE, ADDRESSED TO: As its address may appear in the Escrow Agreement

(B) The Commission, the Trustee (if any), the Registrar, the Paying Agent, the Original Purchaser, the Escrow Trustee, the Municipal Bond Commission or the Bond Insurer may from time to time by notice in writing to the others designate a different address or addresses for notice hereunder.

(C) In connection with any consent required to be obtained from any Owner of 2004 Refunding Bonds, the Commission shall establish a record date to determine the ownership of any 2004 Refunding Bonds for purposes of obtaining such consent, and shall give Depository Trust Company at least 15 calendar days advance notice of the record date so established.

(D) Any notice required to be given by the Commission pursuant to any provision of the Resolution shall also be given to the Bond Insurer.

Section 7.06. Binding Effect. This Eleventh Supplemental Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 7.07. Effective Date. This Eleventh Supplemental Resolution shall take effect immediately upon adoption.

Section 7.08. Consent of Owners of 2004 Refunding Bonds. The Original Purchaser of the 2004 Refunding Bonds shall be deemed to have approved the amendments to

the General Resolution made by the Ninth and Tenth Supplemental Resolutions without further consent on their part.

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Adopted this 2nd day of April, 2004.

Chairman

Secretary

300321

EXHIBIT A

FORM OF 2004 BOND

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE REFUNDING BOND
(University Facilities)

No. R-_____ $_____

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
_____	_____	_____	_____

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: $_____

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), an agency of the State of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on October 1, 2004, and semiannually thereafter on April 1 and October 1 of each year (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Resolution.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by _____, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (15 days before the interest payment dates of April 1 and October 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by _____, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date.

Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent.

This Bond is one of an issue of a Series of Bonds in the aggregate principal amount of not to exceed $18,000,000 (the "Bonds") authorized and issued to provide funds to be expended, together with other moneys available therefor, for refunding of certain outstanding revenue bonds issued by the predecessor of the Commission and paying Costs of Issuance of the 2004 Refunding Bonds, all pursuant to a General Resolution adopted by the Commission on September 9, 1992, and an Eleventh Supplemental Resolution adopted by the Commission on April 2, 2004 (collectively, the "Resolution"). The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 18, Articles 12B and Chapter 18B, Articles 1, 2 and 10 of the West Virginia Code of 1931, as amended, and the Refunding Act (collectively, the "Act").

This Bond and all Bonds of this issue are payable solely, equally and ratably from the Revenues (as such term is defined in the Resolution) on a parity in all respects with the Prior Bonds described below. Reference is hereby made to the Resolution as the same may be further amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Commission and the Registered Owners of the Bonds and any subsequently issued Additional Bonds. Certified copies of the Resolution are on file at the office of the Commission in the City of Charleston, West Virginia.

This Bond is a special obligation of the Commission, payable together with the Prior Bonds hereinafter described and any Additional Bonds which may hereafter be issued, solely from the sources pledged under the Resolution. The bonds of the series of which this Bond is one, as to both principal and interest, shall not constitute a debt or a pledge of the faith and credit or taxing power of the State of West Virginia or of any county, municipality or any other political subdivision of said State, and the owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of said State for the payment of the principal thereof or interest thereon, but the Bonds, together with any Additional Bonds which may subsequently be issued on a parity therewith, shall be payable equally and ratably solely from the sources pledged under the Resolution.

The Bonds are issued on a parity in all respects with the Commission's outstanding "Prior Bonds" (as defined in said Eleventh Supplemental Resolution) and other Additional Bonds which may hereafter be issued pursuant to the General Resolution.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Resolution and as set forth in the following lettered paragraphs:

The Bonds maturing on _____ (the "Term Bonds"), are subject to mandatory redemption prior to maturity in part at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the Mandatory Redemption Date, beginning on _____ respectively, for the Term Bonds, and on each _____1 thereafter, in annual principal amounts as follows:

For the Term Bonds maturing on _____:

Year	Amount

For the Term Bonds maturing on _____:

Year	Amount

The principal amount of the Bonds delivered to or purchased by the Paying Agent shall reduce pro tanto the principal amount of such series of Term Bonds to be redeemed on the Mandatory Redemption Date with respect to such maturity next following such delivery or purchase.

Beginning on _____, the Bonds maturing on and after _____, shall be subject to redemption prior to maturity, at the option of the Issuer, in whole, or in part, on any Business Day, by series and in order of maturity selected by the Issuer and by lot within a maturity in multiples of $5,000, at the Redemption Prices (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued interest to the date fixed for redemption:

Redemption Periods (Dates Inclusive)	Redemption Prices

In the event of any redemption of less than all outstanding Bonds, the maturities to be redeemed shall be selected by the Registrar at the direction of the Commission, and Bonds to be redeemed shall be selected by lot within a maturity, or in such other manner deemed appropriate by the Registrar. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and maturity dates. Notice of the call for any redemption, unless waived by the Registered Owner, shall be given by the Registrar, by mailing a redemption notice, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of any Bond or portions of Bonds to be redeemed in whole or in part at the address shown on the registration books of the Commission maintained by the Registrar, for registration and transfer of the Bonds under the Resolution, and as otherwise prescribed in the Resolution, provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of Additional Bonds which shall be equally and ratably secured under the Resolution with the Bonds.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Resolution. Neither the Commission nor the Registrar shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

IT IS HEREBY FURTHER CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due form, time and manner as required by law.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[The Remainder of Page Intentionally Left Blank]

IN TESTIMONY WHEREOF, the Commission has caused this Bond to be executed by and on its behalf by the manual or facsimile signature of the Authorized Officer of the Commission, and has caused this Bond to be authenticated by the manual signature of an authorized officer of the Registrar, without which authentication this Bond shall not be valid nor entitled to the benefits of the Resolution, all as of the Bond Date stated above.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: _____
Bob Wise, Governor of the State of West Virginia

By: _____
J. Michael Mullen, Chancellor

By: _____
Secretary of State of the State of West Virginia

REGISTRAR'S AUTHENTICATION CERTIFICATE

The undersigned Registrar hereby certifies that this is one of the 2004 Refunding Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below. Attached hereto is the complete text of the opinion of Spilman Thomas & Battle, PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for such Bonds.

Date of Authentication: _____

_____, as Registrar

By: _____
Its Authorized Officer

STATEMENT OF INSURANCE

_____ Insurance Corporation (the "Insurer") has issued a policy containing the following provisions, such policy being on file at (Trustee's (if any), Registrar and Paying Agent Name and Address).

The Insurer, in consideration of the payment of the premium and subject to the terms of this policy, hereby unconditionally and irrevocably guarantees to any owner, as hereinafter defined, of the following described Obligations, the full and complete payment required to be made by or on behalf of the Issuer to (Trustee's (if any), Registrar and Paying Agent Name) or its successor (the "Paying Agent") of an amount equal to (i) the principal of (either the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on the Obligations (as that term is defined below) as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed hereby shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law. The amounts referred to in causes (i) and (ii) of the preceding sentence shall be referred to herein collectively as the "Insured Amounts." "Obligations" shall mean:

State of West Virginia
Higher Education Policy Commission
Revenue Refunding Bonds
(University Facilities)

Upon receipt of telephonic or telegraphic notice, such notice subsequently confined in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by the Insurer from the Paying Agent or any owner of an Obligation the payment of an Insured Amount for which is then due, that such required payment has not been made, the Insurer on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with _____, or its successor, sufficient for the payment of any such Insured Amounts which are then due. Upon presentment and surrender of such Obligations or presentment of such other proof of ownership of the Obligations, together with any appropriate instruments of assignments to evidence the assignment of the Insured Amounts due on the Obligations as are paid by the Insurer, and appropriate instruments to effect the appointment of the Insurer as agent for such owners of the Obligations in any legal proceeding related to payment of Insured Amounts on the Obligations, such instruments being in a form satisfactory to _____, shall disburse to such

owners or the Paying Agent payment of the Insured Amounts due on such Obligations, less any amount held by the Paying Agent for the payment of such Insured Amounts and legally available therefor. This policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Obligation.

As used herein, the term "owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer, or any designee of the Issuer for such purpose. The term owner shall not include the Issuer or any party whose agreement with the Issuer constitutes the underlying security for the Obligations.

Any service of process on the Insurer may be made to the Insurer at its offices located at _____ and such service of process shall be valid and binding.

This policy is non-cancellable for any reason. The premium on this policy is not refundable for any reason including the payment prior to maturity of the Obligations.

ASSIGNMENT

Social Security or Other Identifying Number of Assignee

_____

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____

_____

_____ the within Bond and does hereby irrevocably constitute and appoint

_____

_____

_____ to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____

(Bank, Trust Company or Finn)

_____

(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

TWELFTH SUPPLEMENTAL RESOLUTION

Authorizing

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(University Facilities), 2004 Series A

Adopted: June 4, 2004

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(University Facilities), 2004 Series A

TWELFTH SUPPLEMENTAL RESOLUTION

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STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(University Facilities), 2004 Series A

TWELFTH SUPPLEMENTAL RESOLUTION OF THE HIGHER EDUCATION POLICY COMMISSION

SUPPLEMENTAL RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $90,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF THE COMMISSION'S REVENUE BONDS (UNIVERSITY FACILITIES), 2004 SERIES A; AND SUPPLEMENTING THE GENERAL RESOLUTION OF THE COMMISSION ADOPTED SEPTEMBER 9, 1992.

WHEREAS, the University of West Virginia Board of Trustees (the "Board") on September 9, 1992, adopted a General Resolution (the "General Resolution") pursuant to which it is authorized to issue one or more series of its revenue bonds (the "Bonds");

WHEREAS, the Higher Education Policy Commission (the "Commission"), an agency of the State of West Virginia (the "State"), is the successor to the Board and is empowered and authorized to issue bonds pursuant to the Act, among other things, in furtherance of the public purposes as found and determined by the Legislature of West Virginia as set forth in Section 5 of the Act, to fund capital improvements at certain institutions of higher education previously a part of what was known as the University System;

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the General Resolution;

WHEREAS, the General Resolution establishes the basic provisions regarding the structure of and security for all Bonds to be issued thereunder, and further provides that each Series of Bonds to be issued from time to time is to be individually authorized by a Supplemental Resolution setting forth the principal amount of such Series of Bonds, the terms and provisions of such Series of Bonds, provisions required by any Credit Provider for such Series of Bonds and any other provisions which may be specific to such Series of Bonds;

WHEREAS, pursuant to the First Supplemental Resolution (the "First Supplemental Resolution") adopted by the Board on September 9, 1992, the Board issued its first Series of Bonds under the General Resolution, being its $101,505,000 aggregate principal amount State University System Revenue Refunding Bonds, Series 1992, dated November 1, 1992 (the "1992 Bonds");

WHEREAS, pursuant to the Second Supplemental Resolution (the "Second Supplemental Resolution") adopted by the Board on January 15, 1993, the Board made a minor

amendment to the First Supplemental Resolution, ratifying a change of the date of the Prior Bonds from September 1, 1992 to November 1, 1992;

WHEREAS, pursuant to the Third Supplemental Resolution (the "Third Supplemental Resolution") adopted by the Board on February 23, 1996, the Board issued its Revenue Refunding Bonds, Series 1996 (Marshall University Library/Information Center) (the "1996 Bonds");

WHEREAS, pursuant to the Fourth Supplemental Resolution (the "Fourth Supplemental Resolution") adopted by the Board on October 31, 1997, the Board issued its Revenue Refunding Bonds (University Improvement Projects) 1997 Series A (the "1997 Bonds");

WHEREAS, pursuant to the Fifth Supplemental Resolution (the "Fifth Supplemental Resolution") adopted by the Board on April 3, 1998, the Board issued its University System Revenue Bonds (West Virginia University Projects), 1998 Series A, dated April 1, 1998 (the "1998 Bonds");

WHEREAS, pursuant to the Sixth Supplemental Resolution (the "Sixth Supplemental Resolution") adopted by the Board on May 22, 2000, the Board issued its University System Revenue Bonds (West Virginia University Projects) 2000 Series A (the "2000 Series A Bonds");

WHEREAS, pursuant to the Seventh Supplemental Resolution (the "Seventh Supplemental Resolution") adopted by the Board on May 22, 2000, the Board issued its University System Revenue Bonds (Marshall University Medical Center) 2000 Series B (the "2000 Series B Bonds");

WHEREAS, pursuant to the Eighth Supplemental Resolution (the "Eighth Supplemental Resolution") adopted by the Commission on March 17, 2003, the Commission authorized the issuance of its Revenue Refunding Bonds (University Facilities) in an amount not to exceed $105,000,000 (the "2003 Bonds") (the "2003 Bonds" and collectively with the bond issues described in the preceding seven recitals, the "Prior Bonds");

WHEREAS, pursuant to the Ninth Supplemental Resolution (the "Ninth Supplemental Resolution") adopted by the Commission on April 24, 2003, the Commission made certain amendments to the General Resolution;

WHEREAS, pursuant to the Tenth Supplemental Resolution (the "Tenth Supplemental Resolution") adopted by the Commission on June 5, 2003, the Commission made certain amendments to the General Resolution;

WHEREAS, the Eleventh Supplemental Resolution (the "Eleventh Supplemental Resolution") adopted by the Commission on April 2, 2004, the Commission authorized the issuance of its Revenue Refunding Bonds in an amount not to exceed $18,000,000 (the

"Proposed Bonds"), but the Proposed Bonds have not been issued pursuant to the Eleventh Supplemental Resolution as of the date of the adoption of this Twelfth Supplemental Resolution;

WHEREAS, as of the date of adoption of this Twelfth Supplemental Resolution by the Commission, no Bonds other than the Prior Bonds have been issued by the Commission;

WHEREAS, pursuant to the Act, the Commission is authorized to issue certain Additional Bonds to fund capital improvements at the Institutions listed on Exhibit B hereto (the "2004 Projects") and pay the Costs of Issuance of such Additional Bonds and otherwise to carry out its purposes under the Act;

WHEREAS, the Commission deems it desirable and in keeping with its purposes under the Act, to issue its Revenue Bonds (University Facilities), 2004 Series A (the "2004 University Bonds"), for the purposes of funding a portion of the 2004 Projects and paying Costs of Issuance of the 2004 University Bonds;

WHEREAS, all of the requirements set forth in Section 2.03 of the General Resolution for issuance of Bonds and in Section 2.04 of the General Resolution for issuance of Additional Bonds in the manner and in the amount set forth herein have been met or will be met prior to the date of issuance and delivery of the 2004 University Bonds;

WHEREAS, the Commission therefore wishes to take all necessary actions to issue the 2004 University Bonds for the purposes set forth herein;

WHEREAS, there will be presented to the Chairman or Vice Chairman, the following documents (the "Bond Documents"), to be executed in connection with the issuance and sale of the 2004 University Bonds;

(1) A Bond Purchase Agreement to be dated the date of acceptance thereof by the Chairman or Vice Chairman of the Commission, by and between Citigroup Global Markets, Inc., as the original purchaser of the 2004 University Bonds (the "Original Purchaser") and the Commission, pursuant to which the 2004 University Bonds are proposed to be purchased; and

(2) A Tax Certificate (the "Tax Certificate"), to be dated the Closing Date; and

(3) Any other documents deemed necessary or desirable to aid or effectuate the issuance and sale of the 2004 University Bonds, including documents relating to the investment of the proceeds;

WHEREAS, the Commission contemplates the issuance of bonds payable from the Revenues as such term is defined in the Ninth Supplemental Resolution upon the consent of the Original Purchaser of the 2004 University Bonds to the amendments to the General Resolution made by the Ninth Supplemental Resolution, which consent will be duly granted by the Original Purchaser upon its purchase of the 2004 University Bonds;

WHEREAS, the Commission desires to take all steps necessary for the issuance of the 2004 University Bonds and the funding of the 2004 Projects at the earliest practicable date;

WHEREAS, the Commission wishes to delegate to the Chairman or Vice Chairman, the authority to approve the final terms of the 2004 University Bonds, including the exact principal amount, interest rates, redemption provisions, maturities, purchase price and other terms of the 2004 University Bonds, and the final terms and provisions of the Bond Documents and other agreements relating to the 2004 University Bonds, without the requirement of further official action by the Commission;

WHEREAS, Spilman Thomas & Battle, PLLC, Bond Counsel with respect to the 2004 Bonds, has delivered its opinion to the effect that upon issuance of the 2004 Bonds the amendments to the General Resolution contained herein and in the Ninth and Tenth Supplemental Resolution will have been approved by the Owners of at least fifty percent (50%) of the Bonds Outstanding as of the date of issuance of the 2004 Bonds and that such amendments shall be in full force and effect subject to the terms hereof; and

WHEREAS, Section 10.01 of the General Resolution provides that the Commission may adopt, execute and deliver a Supplemental Resolution without notice to or consent of the Owners of Bonds to modify, alter, amend or supplement the General Resolution in any manner which in the opinion of Bond Counsel does not materially adversely affect the interest of the Owners of the Bonds or any Credit Provider;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION; DESIGNATION OF AUTHORIZED OFFICERS

Section 1.01. Definitions. All capitalized terms and definitions contained in the General Resolution shall, unless defined differently herein, have the same meanings herein, and in addition to the words and terms defined elsewhere in this Twelfth Supplemental Resolution, the following words, terms or phrases shall have the following respective meanings all unless the context clearly indicates a different meaning:

"Authorized Officer" means the person designated pursuant to Section 1.03 hereof.

"Bond Documents" means the documents described in the 21st recital hereto.

"Bond Purchase Agreement" means the Bond Purchase Agreement between the Commission and the Original Purchaser pertaining to the sale of the 2004 University Bonds.

"Bond Year" means, with respect to the 2004 University Bonds, the period commencing July 1 in each year and ending on June 30 of each subsequent calendar year during the term of the 2004 University Bonds, except that the first Bond Year shall commence on the Closing Date and end on June 30, 2004 (unless a different period is permitted or required by the Code).

"Bonds" means collectively, the 2004 University Bonds, the Prior Bonds, and any other Additional Bonds or Refunding Bonds hereafter issued pursuant to the General Resolution.

"Certificate of Determination" means the certificate executed by the Chairman or Vice Chairman setting forth the final terms and provisions of the Bonds, the Bond Purchase Agreement and the other Bond Documents as provided in Section 2.03 hereof.

"Closing Date" means the date upon which the 2004 University Bonds are delivered to the Original Purchaser upon payment of the purchase price set forth in the Bond Purchase Agreement.

"Event of Default" means any one or more of those events set forth in Section 9.01 of the General Resolution.

"Municipal Bond Commission" means the West Virginia Municipal Bond Commission, or its successor, to serve as fiscal agent for the 2004 University Bonds.

"Paying Agent" means such banking institution with offices within or without West Virginia or its successors, designated as a paying agency or place of payment for the 2004 University Bonds in the Certificate of Determination.

"Record Date" means 15 days before the interest payment dates of April 1 and October 1.

"Registrar" means such banking institution with offices in West Virginia or its successors, designated as registrar for the 2004 University Bonds in the Certificate of Determination.

"Resolution" means (unless the context clearly indicates otherwise) collectively, the General Resolution and this Twelfth Supplemental Resolution as they may be amended or supplemented.

"Service Provider" means a party described in clause (x) of Section 2.03 hereof.

"Tax Certificate" means the Tax Certificate of the Commission to be dated as of the Closing Date, as it may be amended or supplemented.

"Trustee" means such banking institution with offices within or without West Virginia or its successors, as may be designated as trustee for the 2004 University Bonds in the Certificate of Determination.

"Twelfth Supplemental Resolution" means this Twelfth Supplemental Resolution as it may be amended or supplemented, and includes all exhibits and schedules thereto.

"2004 University Bonds" means the Commission's Revenue Bonds (University Facilities), 2004 Series A, in such aggregate principal amount (not to exceed $90,000,000) as shall be set forth in the Certificate of Determination.

"2004 University Bonds (University Facilities) Bond Proceeds Fund" means the fund by the name established pursuant to Section 4.01 hereof.

"2004 University Bonds (University Facilities) Costs of Issuance Fund" means the fund by that name established pursuant to Section 4.01 hereof.

"2004 University Bonds (University Facilities) Interest Account" means the account by that name established in the 2004 Bond (University Facilities) Fund pursuant to Section 4.01 hereof.

"2004 University Bonds (University Facilities) Principal Account" means the account by that name established in the 2004 Bond (University Facilities) Fund pursuant to Section 4.01 hereof.

"2004 University Bonds (University Facilities) Redemption Account" means the account by that name established pursuant to Section 4.01 hereof.

Section 1.02. Interpretation. A. Any reference herein to the Commission, or any officer thereof shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

B. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine and feminine gender.

C. Any terms not defined herein but defined in the General Resolution, shall have the same meanings herein.

D. Headings or articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

E. Words importing the redemption of a 2004 Bond or the calling of a 2004 Bond for redemption do not mean or include the payment of a 2004 Bond at its stated maturity or the purchase of a 2004 Bond.

Section 1.03. Designation of Authorized Officers. The Commission hereby designates the Chancellor, the Vice Chancellor of Administration, and the Director of Finance and Facilities, as Authorized Officers of the Commission with respect to the 2004 University Bonds. Each of such Authorized Officers shall file a specimen of his signature with the Trustee (if any), Registrar and Paying Agent.

ARTICLE II

AUTHORIZATION AND TERMS OF 2004 BONDS

Section 2.01. Authorization of 2004 University Bonds. In order to finance in part the 2004 Projects and to pay Costs of Issuance thereof, the Commission hereby authorizes the issuance of the 2004 University Bonds, which shall constitute a "Series of Bonds" and "Additional Bonds" as such terms are defined in the General Resolution, and shall be issued and sold as directed by the Commission in accordance herewith.

Section 2.02. Terms. The 2004 University Bonds shall be issued as one Bond in fully registered form as herein provided, in an aggregate principal amount not to exceed $90,000,000. The 2004 University Bonds shall be numbered R-1. Interest accruing on the 2004 University Bonds on and prior to the maturity date thereof shall be payable by check or draft mailed by the Paying Agent to the Registered Owner thereof as of the applicable Record Date (15 days before the interest payment dates of April 1 and October 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by the Registrar, or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent.

Section 2.03. Certificate of Determination. The Chairman or Vice Chairman shall have the power and authority to execute and deliver the Certificate of Determination, which may include, without limitation, provisions (i) fixing the aggregate principal amount of 2004 University Bonds to be issued, not to exceed $90,000,000, (ii) fixing the maturity schedule for the 2004 University Bonds, such maturities to be not after July 1, 2035, (iii) prescribing the method of determining the interest rates or yields for such 2004 University Bonds, such rates or yields not to exceed an average interest cost of six percent (6%) per annum, (iv) fixing the amounts and times of mandatory redemption for the 2004 University Bonds, (v) fixing optional redemption provisions for the 2004 University Bonds, including times and redemption prices (not to exceed 102% of the principal amount), (vi) fixing the purchase price for the 2004 University Bonds, which may include an underwriting and an original issue discount or premium, (vii) dating such 2004 University Bonds, (viii) determining the necessity of having a Trustee for the 2004 University Bonds, and (ix) designating the Trustee (if deemed necessary), Registrar and Paying Agent for the 2004 University Bonds.

Section 2.04. Form of 2004 University Bonds. The definitive 2004 University Bonds shall be in substantially the form set forth in Exhibit A, attached hereto and incorporated by reference herein, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such 2004 University Bonds on behalf of the Commission. Execution thereof by such officers shall constitute conclusive evidence of such approval.

Section 2.05. 2004 University Bonds on Parity with Prior Bonds. The 2004 University Bonds shall be on a parity with the Prior Bonds with respect to sources of and security for payment and in all other respects.

Section 2.06. Conditions Precedent to Delivery of 2004 University Bonds. The 2004 University Bonds shall be delivered upon receipt by the Registrar of the following:

A. A copy of the General Resolution and the Twelfth Supplemental Resolution certified by the Secretary of the Commission;

B. A copy of the Certificate of Determination;

C. A Bond Counsel's Opinion to the effect that (i) this Twelfth Supplemental Resolution has been duly and lawfully adopted and is in full force and effect; (ii) the General Resolution has been duly and lawfully adopted and is valid and binding upon, and enforceable against, the Commission (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); (iii) the General Resolution creates the valid pledge which it purports to create of the Revenues, and moneys and securities on deposit in any of the Funds established thereunder subject to the application thereof to the purposes and on the conditions permitted by the General Resolution; and (iv) upon the execution and delivery thereof, the 2004 University Bonds will have been duly and validly authorized and issued in accordance with the General Resolution;

D. A written order as to the authentication, registration and delivery of the 2004 University Bonds and the application of the proceeds thereof, signed by an Authorized Officer;

E. A Certificate of the Commission to the effect that:

(i) all payments into the respective funds and accounts provided for in the General Resolution and any Related Supplemental Resolution respecting Bonds theretofore issued and then Outstanding have been made in full to the date of issuance and delivery of the 2004 University Bonds and no Event of Default under the General Resolution or any Related Supplemental Resolution is now existing; and

(ii) the Revenues of the type set forth in subsection (i) of the definition of "Revenues" in Section 1.02 of the General Resolution, collected by the Commission for the last Fiscal Year preceding the date of issuance of the 2004 University Bonds have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 University Bonds and the Prior Bonds; or

(iii) the Revenues (excluding proceeds of any Bonds and earnings thereon) collected by the Commission for the last Fiscal Year preceding the date of issuance of the 2004 University Bonds, plus Projected Revenues (as defined

below) have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 University Bonds and the Prior Bonds; and (b) Projected Revenues have not been greater than 20% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 University Bonds and the Prior Bonds. For the purposes of this subsection (iii), Projected Revenues may include any Revenues which were not in effect or which were not pledged under the General Resolution during the last Fiscal Year, but which have been adopted, charged and pledged prior to or contemporaneously with the issuance of the 2004 University Bonds; and

F. An executed copy of the Trust Indenture, or if no Trustee has been appointed, a copy of the Agreement between the Commission and the Registrar and Paying Agent.

ARTICLE III

EXCHANGE OF BONDS

Section 3.01. Exchange of Bonds. The 2004 University Bonds are issued primarily for the purpose of securing the consent of the holders of more than fifty percent (50%) of Bonds outstanding to the amendments to the General Resolution provided in the Ninth and Tenth Supplemental Resolutions, and thereafter will be exchanged for an equal aggregate amount in par value of Bonds to be issued payable from Revenues as defined in the Ninth Supplemental Resolution.

ARTICLE IV

FUNDS AND ACCOUNTS; APPLICATION OF 2004 BOND PROCEEDS

Section 4.01. Funds and Accounts. (A) There are hereby created by the Commission and ordered established with the Trustee (if any), Registrar and Paying Agent the following funds and accounts in connection with the 2004 University Bonds;

(i) 2004 Bond Fund (University Facilities), and therein;

(a) 2004 University Bonds (University Facilities) Interest Account; and

(b) 2004 University Bonds (University Facilities) Principal Account; and

(c) 2004 University Bonds (University Facilities) Redemption Account.

(B) There are hereby created by the Commission and ordered established with the Trustee (if any), Registrar and Paying Agent the following funds in connection with the 2004 University Bonds;

(i) 2004 University Bonds (University Facilities) Bond Proceeds Fund; and

(ii) 2004 University Bonds (University Facilities) Costs of Issuance Fund.

Section 4.02. Application of 2004 Bond Proceeds. The net proceeds of the sale of the 2004 University Bonds shall initially be deposited in the 2004 University Bonds (University Facilities) Bond Proceeds Fund to be held by the Trustee (if any), and if none by the Municipal Bond Commission. Thereafter, such proceeds or portions thereof shall be applied by the Trustee (if any), and if none by the Municipal Bond Commission, as follows:

(i) All amounts, if any, paid as accrued interest on the 2004 University Bonds from their date to the date of delivery of the 2004 University Bonds shall be deposited in the 2004 University Bonds (University Facilities) Interest Account;

(ii) A sum equal to the Costs of Issuance of the 2004 University Bonds shall be deposited in the 2004 University Bonds (University Facilities) Costs of Issuance Fund;

(iii) The balance of the proceeds of the 2004 University Bonds shall be deposited in the 2004 University Bonds (University Facilities) Bond Proceeds Fund (which Fund may contain one or more subaccounts).

Section 4.03. Flow of Funds. So long as any 2004 University Bonds are Outstanding, amounts deposited and to be deposited in the funds and accounts established by Section 4.01 hereof shall be applied by the Trustee (if any), and if none by the Municipal Bond Commission in the manner and order of priority as set forth herein and in Article VII of the General Resolution.

Section 4.04. Disbursements. The proceeds of the 2004 University Bonds deposited in the 2004 University Bonds (University Facilities) Bond Proceeds Fund shall be disbursed by the Trustee, if any, and if none by the Treasurer upon proper requisition by an Authorized Officer for payment of costs of the 2004 Projects. The proceeds of the 2004 University Bonds deposited in the 2004 University Bonds (University Facilities) Costs of Issuance Fund with the Trustee (if any), and if none by the Treasurer, shall be disbursed to solely to pay the Costs of Issuance of the 2004 University Bonds. The funds in the 2004 University Bonds (University Facilities) Cost of Issuance Fund shall be disbursed upon requisition by an Authorized Officer. Any funds remaining in the 2004 University Bonds (University Facilities) Costs of Issuance Fund 180 days after the initial issuance of the 2004 University Bonds shall be transferred to the 2004 University Bonds (University Facilities) Bond Proceeds Fund.

Section 4.05. Arbitrage Covenant. Neither the Trustee (if any), and if none by the Municipal Bond Commission, nor the Commission shall use or direct or permit the use of any moneys of the Commission in its possession or control in any manner which would cause any 2004 University Bonds to be an "arbitrage bond" within the meaning of such term in Sections 103 and 148 of the Code.

Section 4.06. Tax Certificate. Notwithstanding any provision of the Resolution, the Commission shall observe its covenants, representations and agreements contained in the Tax Certificate. In the event any provision of the Resolution conflicts with any provision of the Tax Certificate, the provisions of the Tax Certificate shall govern.

ARTICLE V

GENERAL COVENANTS OF THE COMMISSION

Section 5.01. General. Except to the extent amended or modified by Section 1.03 hereof, the covenants contained in Article VI of the General Resolution are hereby continued, approved, ratified and confirmed, shall apply fully to the 2004 University Bonds, and are incorporated herein by reference as a part hereof.

Section 5.02. Covenants. All covenants, stipulations, obligations and agreements of the Commission contained herein and contained in the Resolution shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Commission to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Commission and its successors from time to time and upon any Commission or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Commission or the officials thereof by the provisions hereof and by the Resolution shall be exercised or performed by the Commission or by such officers, or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the 2004 University Bonds or the Bond Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Commission in his or her individual capacity, and neither the member of the Commission nor any officer executing the 2004 University Bonds shall be liable personally on the 2004 University Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

ARTICLE VI

APPROVAL OF DOCUMENTS AND APPOINTMENT OF FIDUCIARIES

Section 6.01. Approval of Bond Documents. The Chairman or Vice Chairman is authorized, for and on behalf of Commission, to approve the final terms of the 2004 University Bonds within the financing parameters established by Section 2.03 of this Resolution, and to negotiate, execute and deliver all documentation related to the issuance of the 2004 University Bonds, including without limitation the Bond Documents, upon the terms and conditions as such officers may approve, such approval to be conclusively evidenced by the execution of such documents by any of such officers.

Section 6.02. Appointment of Fiduciaries. The Certificate of Determination shall appoint and designate the Trustee (if any), Registrar and Paying Agent for the 2004 University Bonds,

ARTICLE VII

MISCELLANEOUS

Section 7.01. General Resolution. This Twelfth Supplemental Resolution is supplemental to the General Resolution and all provisions of said General Resolution, unless clearly inapplicable or altered hereby, shall apply to the 2004 University Bonds, this Twelfth Supplemental Resolution and matters relating thereto as if set forth verbatim herein. In the event of any conflict between the General Resolution and this Twelfth Supplemental Resolution, this Twelfth Supplemental Resolution shall control. This Twelfth Supplemental Resolution, the General Resolution, the Bond Indenture and the Certificate of Determination, to the extent applicable, shall and must be read as a single document and shall supersede all prior resolutions, orders and understandings, both written and oral, by the Commission, with respect to the subject matter hereof.

Section 7.02. Incidental Action. The execution and delivery of the 2004 University Bonds and the execution, delivery and due performance of the Bond Documents is hereby in all respects approved, authorized, ratified and confirmed including all acts heretofore taken in connection with the issuance of the 2004 University Bonds, and it is hereby ordered that the Chairman, Vice Chairman, Secretary and other members and officers of the Commission execute and deliver such other documents, certificates, agreements and instruments, and take such other Action as may be required or desirable to carry out the purposes of this Twelfth Supplemental Resolution, the 2004 University Bonds and the aforesaid instruments, including, but limited to, execution and delivery of any commitment for bond insurance.

Section 7.03. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof, or the 2004 University Bonds issued pursuant hereto, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

Section 7.04. Governing Law. This Twelfth Supplemental Resolution and the 2004 University Bonds are contracts made under the laws of the State of West Virginia and shall be governed and construed in accordance with such laws.

Section 7.05. Notices. (A) Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall, be deemed sufficiently given or served if given in writing, mailed by registered or certified mail, postage prepaid or by overnight courier service and addressed as follows:

(i) IF TO THE COMMISSION, ADDRESSED TO:

West Virginia Higher Education Policy Commission
Suite 700
1018 Kanawha Boulevard, East
Charleston, West Virginia 25301

Attention: Director of Finance and Facilities

(ii) IF TO THE TRUSTEE (if any), REGISTRAR OR PAYING AGENT ADDRESSED TO: As it may appear in the Certificate of Determination

(iii) IF TO THE OWNER OF A 2004 BOND, ADDRESSED TO: Such Holder at the address shown on the books of the Registrar kept pursuant hereto

(iv) IF TO THE ORIGINAL PURCHASER, ADDRESSED TO:

Citigroup Global Markets, Inc.
One Liberty Place
1650 Market Street, 45th Floor
Philadelphia, PA 19103
Attn: Public Finance Group

(B) The Commission, the Trustee (if any), the Registrar, the Paying Agent, the Original Purchaser, or the Municipal Bond Commission may from time to time by notice in writing to the others designate a different address or addresses for notice hereunder.

(C) In connection with any consent required to be obtained from any Owner of 2004 University Bonds, the Commission shall establish a record date to determine the ownership of any 2004 University Bonds for purposes of obtaining such consent, and shall give Depository Trust Company at least 15 calendar days advance notice of the record date so established.

Section 7.06. Binding Effect. This Twelfth Supplemental Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 7.07. Effective Date. This Twelfth Supplemental Resolution shall take effect immediately upon adoption.

Section 7.08. Consent of Owners of 2004 University Bonds. The Original Purchaser of the 2004 University Bonds shall be deemed to have approved the amendments to the General Resolution made by the Ninth and Tenth Supplemental Resolutions upon its purchase of the 2004 University Bonds without further action on the part of the Original Purchaser.

Section 7.09. Rescission of Authorization to Issue Bonds Under the Eleventh Supplemental Resolution. The Commission hereby rescinds the authorization for the issuance of Additional Bonds contained in the Eleventh Supplemental Resolution.

Adopted this 4th day of June, 2004.

Chairman

Secretary

308299

EXHIBIT A

FORM OF 2004 BOND

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BOND
(UNIVERSITY FACILITIES), 2004 SERIES A

No. R-1 $150,000,000

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
_____	_____	_____	_____

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: $ONE HUNDRED FIFTY MILLION DOLLARS ($150,000,000)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), an agency of the State of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on October 1, 2004, and semiannually thereafter on April 1 and October 1 of each year (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Twelfth Supplemental Resolution.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by _____, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (15 days before the interest payment dates of April 1 and October 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by _____, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date.

Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent.

This Bond is one of an issue of a Series of Bonds in the aggregate principal amount of not to exceed $150,000,000 (the "Bonds") authorized and issued to provide funds to be expended, together with other moneys available therefor, for fund a portion of the 2004 Projects and paying Costs of Issuance of the 2004 University Bonds, all pursuant to a General Resolution adopted by the Commission on September 9, 1992, and a Twelfth Supplemental Resolution adopted by the Commission on _____, 2004 (collectively, the "Resolution"). The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 18, Articles 12B and Chapter 18B, Articles 1, 2 and 10 of the West Virginia Code of 1931, as amended, and the Refunding Act (collectively, the "Act").

This Bond and all Bonds of this issue are payable solely, equally and ratably from the Revenues (as such term is defined in the Resolution) on a parity in all respects with the Prior Bonds described below. Reference is hereby made to the Resolution as the same may be further amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Commission and the Registered Owners of the Bonds and any subsequently issued Additional Bonds. Certified copies of the Resolution are on file at the office of the Commission in the City of Charleston, West Virginia.

This Bond is a special obligation of the Commission, payable together with the Prior Bonds hereinafter described and any Additional Bonds which may hereafter be issued, solely from the sources pledged under the Resolution. The bonds of the series of which this Bond is one, as to both principal and interest, shall not constitute a debt or a pledge of the faith and credit or taxing power of the State of West Virginia or of any county, municipality or any other political subdivision of said State, and the owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of said State for the payment of the principal thereof or interest thereon, but the Bonds, together with any Additional Bonds which may subsequently be issued on a parity therewith, shall be payable equally and ratably solely from the sources pledged under the Resolution.

The Bonds are issued on a parity in all respects with the Commission's outstanding "Prior Bonds" (as defined in said Twelfth Supplemental Resolution) and other Additional Bonds which may hereafter be issued pursuant to the General Resolution.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of Additional Bonds which shall be equally and ratably secured under the Resolution with the Bonds.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Resolution. Neither the Commission nor the Registrar shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

IT IS HEREBY FURTHER CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due form, time and manner as required by law.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[The Remainder of Page Intentionally Left Blank]

IN TESTIMONY WHEREOF, the Commission has caused this Bond to be executed by and on its behalf by the manual or facsimile signature of the Authorized Officer of the Commission, and has caused this Bond to be authenticated by the manual signature of an authorized officer of the Registrar, without which authentication this Bond shall not be valid nor entitled to the benefits of the Resolution, all as of the Bond Date stated above.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: _____
Bob Wise, Governor of the State of West Virginia

By: _____
J. Michael Mullen, Chancellor

By: _____
Secretary of State of the State of West Virginia

308299

REGISTRAR'S AUTHENTICATION CERTIFICATE

The undersigned Registrar hereby certifies that this is one of the 2004 University Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below. Attached hereto is the complete text of the opinion of Spilman Thomas & Battle, PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for such Bonds.

Date of Authentication: _____

_____, as Registrar

By: _____
Its Authorized Officer

ASSIGNMENT

Social Security or Other Identifying Number of Assignee

_____

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto_____

_____

_____the within Bond and does hereby irrevocably constitute and appoint

_____

_____

_____ to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____

(Bank, Trust Company or Finn)

_____

(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

FIRST CONSOLIDATED
SUPPLEMENTAL RESOLUTION

Authorizing

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(Higher Education Facilities), 2004 Series B

Adopted: June 4, 2004

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(Higher Education Facilities), 2004 Series B

RESOLUTION

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STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(Higher Education Facilities), 2004 Series B

RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $160,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE COMMISSION'S REVENUE BONDS (HIGHER EDUCATION FACILITIES), 2004 SERIES B; AND SUPPLEMENTING THE GENERAL RESOLUTION OF THE COMMISSION ADOPTED SEPTEMBER 9, 1992.

WHEREAS, the University of West Virginia Board of Trustees (the "Board of Trustees") on September 9, 1992, adopted a General Resolution (the "University General Resolution") pursuant to which it is authorized to issue one or more series of its revenue bonds (the "University Bonds");

WHEREAS, the Board of Directors of the State College System (the "Board of Directors") on September 9, 1992, adopted a General Resolution (the "College General Resolution" and collectively with the University General Resolution, the "General Resolution") pursuant to which it is authorized to issue one or more series of its revenue bonds (the "College Bonds" and collectively with the University Bonds, the "Bonds");

WHEREAS, the Higher Education Policy Commission (the "Commission"), an agency of the State of West Virginia (the "State"), is the successor to the Board of Trustees and the Board of Directors and is empowered and authorized to issue bonds pursuant to the Act, among other things, in furtherance of the public purposes as found and determined by the Legislature of West Virginia as set forth in Section 5 of the Act, to fund the capital improvements at certain institutions of higher education;

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the General Resolution;

WHEREAS, the General Resolution establishes the basic provisions regarding the structure of and security for all Bonds to be issued thereunder, and further provides that each Series of Bonds to be issued from time to time is to be individually authorized by a Supplemental Resolution setting forth the principal amount of such Series of Bonds, the terms and provisions of such Series of Bonds, provisions required by any Credit Provider for such Series of Bonds and any other provisions which may be specific to such Series of Bonds;

WHEREAS, pursuant to the First Supplemental Resolution (the "University First Supplemental Resolution") adopted by the Board of Trustees on September 9, 1992, the Board of Trustees issued its first Series of Bonds under the General Resolution, being its $101,505,000 aggregate principal amount State University System Revenue Refunding Bonds, Series 1992, dated November 1, 1992 (the "1992 Bonds");

WHEREAS, pursuant to the Second Supplemental Resolution (the "University Second Supplemental Resolution") adopted by the Board of Trustees on January 15, 1993, the Board of Trustees made a minor amendment to the University First Supplemental Resolution, ratifying a change of the date of the Prior Bonds from September 1, 1992 to November 1, 1992;

WHEREAS, pursuant to the Third Supplemental Resolution (the "University Third Supplemental Resolution") adopted by the Board of Trustees on February 23, 1996, the Board of Trustees issued its Revenue Refunding Bonds, Series 1996 (Marshall University Library/Information Center) (the "1996 Bonds");

WHEREAS, pursuant to the Fourth Supplemental Resolution (the "University Fourth Supplemental Resolution") adopted by the Board of Trustees on October 31, 1997, the Board of Trustees issued its Revenue Refunding Bonds (University Improvement Projects) 1997 Series A (the "1997 Bonds");

WHEREAS, pursuant to the Fifth Supplemental Resolution (the "University Fifth Supplemental Resolution") adopted by the Board of Trustees on April 3, 1998, the Board of Trustees issued its University System Revenue Bonds (West Virginia University Projects), 1998 Series A, dated April 1, 1998 (the "1998 Bonds");

WHEREAS, pursuant to the Sixth Supplemental Resolution (the "University Sixth Supplemental Resolution") adopted by the Board of Trustees on May 22, 2000, the Board of Trustees issued its University System Revenue Bonds (West Virginia University Projects) 2000 Series A (the "2000 Series A Bonds");

WHEREAS, pursuant to the Seventh Supplemental Resolution (the "University Seventh Supplemental Resolution") adopted by the Board of Trustees on May 22, 2000, the Board of Trustees issued its University System Revenue Bonds (Marshall University Medical Center) 2000 Series B (the "2000 Series B Bonds");

WHEREAS, pursuant to the Eighth Supplemental Resolution (the "University Eighth Supplemental Resolution") adopted by the Commission on March 17, 2003, the Commission authorized the issuance of its Revenue Refunding Bonds (University Facilities) in an amount not to exceed $105,000,000 (the "2003 Bonds") (and collectively with the bond issues described in the preceding seven recitals, the "Prior Bonds", and collectively with the Bonds still outstanding under the University General Resolution, the "Prior University Bonds");

WHEREAS, pursuant to the Ninth Supplemental Resolution (the "University Ninth Supplemental Resolution") adopted by the Commission on April 24, 2003, the Commission made certain amendments to the General Resolution, and in Section 1.02 thereof

prospective amendments which would go into effect only upon adoption of a resolution by the Commission putting such amendments in effect (the "Prospective Amendment to the University General Resolution") prospective amendments;

WHEREAS, pursuant to the Tenth Supplemental Resolution (the "University Tenth Supplemental Resolution") adopted by the Commission on June 5, 2003, the Commission made certain amendments to the General Resolution;

WHEREAS, pursuant to the Eleventh Supplemental Resolution (the "University Eleventh Supplemental Resolution") adopted by the Commission on April 2, 2004, the Commission authorized the issuance of its Revenue Refunding Bonds in an amount not to exceed $18,000,000 (the "Proposed Bonds"), but no Proposed Bonds have been issued pursuant to this Supplemental Resolution;

WHEREAS, pursuant to the Twelfth Supplemental Resolution (the "University Twelfth Supplemental Resolution") adopted by the Commission on June 4, 2004, the Commission authorized the issuance of its Revenue Bonds (University Facilities), 2004 Series A in an amount not to exceed $90,000,000 (the "2004 University Bonds");

WHEREAS, pursuant to the First Supplemental Resolution (the "College First Supplemental Resolution") adopted by the Board of Directors on September 9, 1992, the Board of Directors issued its first Series of Bonds under the General Resolution, being its $46,825,000 aggregate principal amount State College System Revenue Refunding Bonds, Series 1992, dated November 1, 1992 (the "1992 Bonds");

WHEREAS, pursuant to the Second Supplemental Resolution (the "College Second Supplemental Resolution") adopted by the Board of Directors on January 15, 1993, the Board of Directors made a minor amendment to the College First Supplemental Resolution, ratifying a change of the date of the 1992 Bonds from September 1, 1992 to November 1, 1992;

WHEREAS, pursuant to the Third Supplemental Resolution (the "College Third Supplemental Resolution") adopted by the Board of Directors on October 21, 1997, the Board of Directors issued its second Series of Bonds under the General Resolution, being its $9,920,000 aggregate principal amount State College System Revenue Bonds (College Improvement Projects) 1997 Series A, dated November 20, 1997 (the "1997 Bonds" and with the 1992 Bonds, the "Currently Outstanding Bonds");

WHEREAS, pursuant to the Fourth Supplemental Resolution (the "College Fourth Supplemental Resolution") adopted by the Commission on March 17, 2003, the Commission authorized the issuance of its Revenue Refunding Bonds (State College Facilities) in an amount not to exceed $40,000,000 (the "2003 Bonds") to refund all of the Currently Outstanding Bonds;

WHEREAS, pursuant to the Fifth Supplemental Resolution (the "College Fifth Supplemental Resolution") adopted by the Commission on April 24, 2003, the Commission made certain amendments to the General Resolution and further adopted, in Section 1.02 thereof, prospective amendments to the General Resolution which would only go into effect upon adoption by the Commission of a Supplemental Resolution putting such amendment into effect (the "Prospective Amendment to the College General Resolution", and, collectively with the Prospective Amendment to the University General Resolution, the "Prospective Amendment"). The terms of each Prospective Amendments are identical except for the respective reference to Universities and Colleges;

WHEREAS, pursuant to the Sixth Supplemental Resolution (the "College Sixth Supplemental Resolution") adopted by the Commission on June 5, 2003, the Board of Directors made certain amendments to the General Resolution;

WHEREAS, as of the date of adoption of this Resolution by the Commission, no Bonds other than the Prior Bonds and the 2004 University Bonds have been issued by the Commission;

WHEREAS, the Prospective Amendments can only be put into effect upon the Commission's adoption of a Supplemental Resolution putting such amendments into effect;

WHEREAS, pursuant to the Act, the Commission is authorized to issue certain Additional Bonds to provide capital improvements at the Institutions listed on Exhibit B hereto (the "2004 Projects") and pay the Costs of Issuance of such Additional Bonds and otherwise to carry out its purposes under the Act;

WHEREAS, the Commission deems it desirable and in keeping with its purposes under the Act, to issue its Revenue Bonds (Higher Education Facilities), 2004 Series B (the "2004 Bonds"), for the purposes of funding a portion of the 2004 Projects and paying Costs of Issuance of the 2004 Bonds;

WHEREAS, all of the requirements set forth in Section 2.03 of the General Resolution for issuance of Bonds and in Section 2.04 of the General Resolution for issuance of Additional Bonds in the manner and in the amount set forth herein have been met or will be met prior to the date of issuance and delivery of the 2004 Bonds;

WHEREAS, Section 10.02 of the General Resolution provides that the Commission may amend or modify the rights and obligations of the Commission and the Owners of Bonds issued thereunder with the consent of the Owners of at least fifty percent (50%) in principal amount of Bonds outstanding at the time such consent is given and the Credit Provider, if any;

WHEREAS, the College Fifth Supplemental Resolution and the University Ninth Supplemental Resolution provides that the Commission may consolidate the financings previously issued by the Commission with the financings issued by the Board of Trustees and the Board of Directors, and its successors under the terms of the General Resolution;

WHEREAS, the Commission desires to consolidate the financings for the Institutions under one General Resolution;

WHEREAS, the Legislature, by the adoption of Senate Concurrent Resolution 1001 on March 25, 2004, has authorized the payment of debt service on revenue bonds for capital improvements from the excess lottery revenues under West Virginia Code § 29-22-18a, in an annual amount equal to Ten Million Dollars ($10,000,000);

WHEREAS, the Commission therefore wishes to take all necessary actions to issue the 2004 Bonds for the purposes set forth herein;

WHEREAS, there will be presented to the Chairman or Vice Chairman, the following documents (the "Bond Documents"), to be executed in connection with the issuance and sale of the 2004 Bonds;

(1) A Bond Purchase Agreement to be dated the date of acceptance thereof by the Chairman or Vice Chairman of the Commission, by and between Citigroup Global Markets, Inc., as the original purchaser of the 2004 Bonds (the "Original Purchaser") and the Commission, pursuant to which the 2004 Bonds are proposed to be purchased; and

(2) A Continuing Disclosure Agreement (as defined herein), to be dated the Closing Date; and

(3) A Preliminary Official Statement (the "Preliminary Official Statement"), relating to the 2004 Refunding Bonds (which when executed in final form as provided in Section 6.02 hereof, the "Official Statement"); and

(4) A Tax Certificate (the "Tax Certificate"), to be dated the Closing Date; and

(5) An Insurance Commitment if the 2004 Refunding Bonds are insured; and

(6) A Rule 15c-2-12 Certificate; and

(7) Agreements with any Service Provider (as hereinafter defined); and

(8) Any other documents deemed necessary or desirable to aid or effectuate the issuance and sale of the 2004 Bonds, including documents relating to hedge transactions and investment of the proceeds;

WHEREAS, the Commission contemplates the issuance of bonds payable from the Revenues as such term is defined in the University Ninth Supplemental Resolution upon the consent of the Original Purchaser of the 2004 University Bonds to the amendments to the General Resolution made by the University Ninth and Tenth Supplemental Resolutions, which consent will be duly granted by the Original Purchaser upon its purchase of the 2004 University Bonds.

WHEREAS, the Commission desires to take all steps necessary for the issuance of the 2004 Bonds and the funding of the 2004 Projects at the earliest practicable date; and

WHEREAS, the Commission wishes to delegate to the Chairman or Vice Chairman the authority to approve the final terms of the 2004 Bonds, including the exact principal amount, interest rates, redemption provisions, maturities, purchase price and other terms of the 2004 Bonds, the terms and provisions relating specifically to a Bond Insurance Policy and the final terms and provisions of the Bond Documents and other agreements relating to the 2004 Bonds, without the requirement of further official action by the Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION; DESIGNATION OF AUTHORIZED OFFICERS

Section 1.01. Definitions. All capitalized terms and definitions contained in the General Resolution shall, unless defined differently herein, have the same meanings herein, and in addition to the words and terms defined elsewhere in this Resolution, the following words, terms or phrases shall have the following respective meanings all unless the context clearly indicates a different meaning:

"Authorized Officer" means the person designated pursuant to Section 1.03 hereof.

"Bond Documents" means the documents described in the 31st recital hereto.

"Bond Insurance Policy" means the policy of municipal bond insurance insuring the payment when due of the principal of and interest on the 2004 Refunding Bonds as provided therein.

"Bond Insurer" means the insurance carrier which issues the Bond Insurance Policy.

"Bond Purchase Agreement" means the Bond Purchase Agreement between the Commission and the Original Purchaser pertaining to the sale of the 2004 Bonds.

"Bond Year" means, with respect to the 2004 Bonds, the period commencing July 1 in each year and ending on June 30 of each subsequent calendar year during the term of the 2004 Bonds, except that the first Bond Year shall commence on the Closing Date and end on June 30, 2004 (unless a different period is permitted or required by the Code).

"Bonds" means collectively, the 2004 Bonds, the Prior Bonds, and any other Additional Bonds or Refunding Bonds hereafter issued pursuant to the General Resolution.

"Certificate of Determination" means the certificate executed by the Chairman or Vice Chairman setting forth the final terms and provisions of the Bonds, the Bond Purchase Agreement and the other Bond Documents as provided in Section 2.03 hereof.

"Closing Date" means the date upon which the 2004 Bonds are delivered to the Original Purchaser upon payment of the purchase price set forth in the Bond Purchase Agreement.

"Continuing Disclosure Agreement" means a Continuing Disclosure Agreement between the Commission and the Original Purchaser, to be dated the Closing Date.

"Event of Default" means any one or more of those events set forth in Section 9.01 of the General Resolution.

"Municipal Bond Commission" means the West Virginia Municipal Bond Commission, or its successor, to serve as fiscal agent for the 2004 Bonds.

"Official Statement" means the Official Statement to be dated the date of execution of the Bond Purchase Agreement, prepared and distributed in connection with the sale of the 2004 Refunding Bonds and approved by the Commission.

"Paying Agent" means such banking institution with offices within or without West Virginia or its successors, designated as a paying agency or place of payment for the 2004 Bonds in the Certificate of Determination.

"Preliminary Official Statement" means the Preliminary Official Statement to be prepared and distributed in connection with the sale of the 2004 Refunding Bonds.

"Record Date" means 15 days before the interest payment dates of April 1 and October 1.

"Registrar" means such banking institution with offices in West Virginia or its successors, designated as registrar for the 2004 Bonds in the Certificate of Determination.

"Representation Letter" means the DTC Blanket Letter of Representations in form satisfactory to DTC, previously delivered to DTC in connection with the issuance and delivery of the 2004 Refunding Bonds.

"Resolution" means (unless the context clearly indicates otherwise) collectively, the General Resolution and this Resolution as they may be amended or supplemented.

"Service Provider" means a party described in clause (x) of Section 2.03 hereof.

"Tax Certificate" means the Tax Certificate of the Commission to be dated as of the Closing Date, as it may be amended or supplemented.

"Trustee" means such banking institution with offices within or without West Virginia or its successors, as may be designated as trustee for the 2004 Bonds in the Certificate of Determination.

"2004 Bonds" means the Commission's Revenue Bonds (Higher Education Facilities), 2004 Series B, in such aggregate principal amount (not to exceed $160,000,000) as shall be set forth in the Certificate of Determination.

"2004 Bonds (Higher Education Facilities) Bond Proceeds Fund" means the fund by the name established pursuant to Section 4.01 hereof.

"2004 Bonds (Higher Education Facilities) Costs of Issuance Fund" means the fund by that name established pursuant to Section 4.01 hereof.

"2004 Bonds (Higher Education Facilities) Interest Account" means the account by that name established in the 2004 Bond (Higher Education Facilities) Fund pursuant to Section 4.01 hereof.

"2004 Bonds (Higher Education Facilities) Principal Account" means the account by that name established in the 2004 Bond (Higher Education Facilities) Fund pursuant to Section 4.01 hereof.

"2004 Bonds (Higher Education Facilities) Redemption Account" means the account by that name established pursuant to Section 4.01 hereof.

Section 1.02. Interpretation. A. Any reference herein to the Commission, or any officer thereof shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

B. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine and feminine gender.

C. Any terms not defined herein but defined in the General Resolution, shall have the same meanings herein.

D. Headings or articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

E. Words importing the redemption of a 2004 Bond or the calling of a 2004 Bond for redemption do not mean or include the payment of a 2004 Bond at its stated maturity or the purchase of a 2004 Bond.

F. This Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 1.03. Designation of Authorized Officers. The Commission hereby designates the Chancellor, the Vice Chancellor of Administration, and the Director of Finance and Facilities, as Authorized Officers of the Commission with respect to the 2004 Bonds. Each of such Authorized Officers shall file a specimen of his signature with the Trustee (if any), Registrar and Paying Agent.

ARTICLE II

AUTHORIZATION AND TERMS OF 2004 BONDS

Section 2.01. Authorization of 2004 Bonds. In order to finance in part the 2004 Projects and to pay Costs of Issuance thereof, the Commission hereby authorizes the issuance of one or more series of the 2004 Bonds, each of which shall constitute a "Series of Bonds" and "Additional Bonds" as such terms are defined in the General Resolution, and shall be issued and sold as directed by the Commission in accordance herewith.

Section 2.02. Terms. The 2004 Bonds shall be issued in fully registered form as herein provided, in denominations of $5,000 and integral multiples thereof, in an aggregate principal amount not to exceed $160,000,000. The 2004 Bonds shall be numbered from R-1 upward. Interest accruing on the 2004 Bonds on and prior to the maturity date thereof shall be payable by check or draft mailed by the Paying Agent to the Registered Owner thereof as of the applicable Record Date (15 days before the interest payment dates of April 1 and October 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by the Registrar, or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent.

Section 2.03. Certificate of Determination. The Chairman or Vice Chairman shall have the power and authority to execute and deliver the Certificate of Determination, which may include, without limitation, provisions (i) fixing the aggregate principal amount of 2004 Bonds to be issued, not to exceed $160,000,000, (ii) fixing the maturity schedule for the 2004 Bonds, including the amounts of serial bonds and term bonds, such maturities to be not after July 1, 2035, (iii) prescribing the method of determining the interest rates or yields for such 2004 Bonds, such rates or yields not to exceed an average interest cost of six percent (6%) per annum, (iv) fixing the amounts and times of mandatory redemption for the 2004 Bonds, (v) fixing optional redemption provisions for the 2004 Bonds, including times and redemption prices (not to exceed 102% of the principal amount), (vi) fixing the purchase price for the 2004 Bonds, which may include an underwriting and an original issue discount or premium, (vii) dating such 2004 Bonds, (viii) determining whether the 2004 Bonds shall be issued in one or more series and assigning a designation to each such series, (ix) designating the provider of the Bond Insurance Policy, (x) designating a remarketing agent, a tender agent, an auction agent, a liquidity provider, a credit provider and the provider of other services which may be deemed by such officer as necessary or desirable to support the 2004 Bonds (each a "Service Provider"), (xi) determining the necessity of having a Trustee for the 2004 Bonds, and (xii) designating the Trustee (if deemed necessary), Registrar and Paying Agent for the 2004 Bonds.

Section 2.04. Book Entry System for 2004 Bonds.

(a) Notwithstanding the foregoing provisions of this Article II, the 2004 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal

amount of the 2004 Bonds of each maturity, which 2004 Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Except as provided in paragraph (g) below, all of the 2004 Bonds shall be registered in the registration books kept by the Registrar in the name of Cede & Co., as nominee of DTC; provided that if DTC shall request that the 2004 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the 2004 Bonds for an equal aggregate principal amount of 2004 Bonds registered in the name of such nominee or nominees of DTC. No person other than DTC or its nominee shall be entitled to receive from the Issuer or the Registrar either a 2004 Bond or any other evidence of ownership of the 2004 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the 2004 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph (g) below or otherwise.

(b) So long as the 2004 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the Principal or Redemption Price of or interest on such 2004 Bonds shall be made to DTC or its nominee in Federal funds on the dates provided for such payments under this Resolution or as set forth in the 2004 Bonds. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer or the Registrar with respect to the Principal or Redemption Price of or interest on the 2004 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the 2004 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC or its nominee of the 2004 Bonds so redeemed, but DTC (or its nominee) may retain such 2004 Bonds and make an appropriate notation on the 2004 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption and thereafter the records maintained by the Registrar shall be conclusive as to the amount of the 2004 Bonds of such maturity which have been redeemed.

(c) The Issuer and the Registrar may treat DTC (or its nominee) as the sole and exclusive Owner of the 2004 Bonds registered in its name for the purposes of payment of the Principal or Redemption Price of or interest on the 2004 Bonds, selecting the 2004 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Resolution, registering the transfer of 2004 Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever; and neither the Issuer nor the Registrar shall be affected by any notice to the contrary. Neither the Issuer nor the Registrar shall have any responsibility or obligation to any participant in DTC, any person claiming a beneficial ownership interest in the 2004 Bonds under or through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Bondholder, with respect to either: (1) the 2004 Bonds; or (2) the accuracy of any records maintained by DTC or any such participant; or (3) the payment by DTC or any such participant of any amount in respect of the Principal or Redemption Price of or interest on the 2004 Bonds; or (4) any notice which is permitted or required to be given to Bondholders under this Resolution; or (5) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the 2004 Bonds; or (6) any consent given or other action taken by DTC as Bondholder.

(d) So long as the 2004 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all notices required or permitted to be given to the Bondholders under this Resolution shall be given to DTC as provided in the Representation Letter.

(e) In connection with any notice or other communication to be provided to Bondholders pursuant to this Resolution by the Issuer or the Registrar with respect to any consent or other action to be taken by Bondholders, DTC shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action, provided that the Issuer or the Registrar may establish a special record date for such consent or other action. The Issuer or the Registrar shall give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

(f) At or prior to settlement for the 2004 Bonds, the Issuer and the Registrar shall execute or signify their approval of the Representation Letter. Any successor Registrar shall, in its written acceptance of its duties under this Resolution, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

(g) The book-entry system for registration of the ownership of the 2004 Bonds may be discontinued at any time if either: (1) DTC determines to resign as securities depository for the 2004 Bonds; or (2) the Issuer determines that continuation of the system of book-entry transfers through DTC (or through a successor securities depository) is not in the best interests of the Issuer. In either of such events (unless in the case described in clause (2) above, the Issuer appoints a successor securities depository) the 2004 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Registrar for the accuracy of such designation. Whenever DTC requests the Issuer and the Registrar to do so, the Issuer and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the 2004 Bonds.

Section 2.05. Form of 2004 Bonds. The definitive 2004 Bonds shall be in substantially the form set forth in Exhibit A, attached hereto and incorporated by reference herein, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such 2004 Bonds on behalf of the Commission. Execution thereof by such officers shall constitute conclusive evidence of such approval.

Section 2.06. 2004 Bonds on Parity with Prior Bonds. The 2004 Bonds shall be on a parity with the Prior Bonds with respect to sources of and security for payment and in all other respects.

Section 2.07. Conditions Precedent to Delivery of 2004 Bonds. The 2004 Bonds shall be delivered upon receipt by the Registrar of the following:

A. A copy of the General Resolution and the Resolution certified by the Secretary of the Commission;

B. A copy of the Certificate of Determination;

C. A Bond Counsel's Opinion to the effect that (i) this Resolution has been duly and lawfully adopted and is in full force and effect; (ii) the General Resolution has been duly and lawfully adopted and is valid and binding upon, and enforceable against, the Commission (except to the extent that the enforceability thereof may be limited by the operation of bankruptcy, insolvency and similar laws affecting rights and remedies of creditors); (iii) the General Resolution creates the valid pledge which it purports to create of the Revenues, and moneys and securities on deposit in any of the Funds established thereunder (other than a Purchase Fund, if any) subject to the application thereof to the purposes and on the conditions permitted by the General Resolution; and (iv) upon the execution and delivery thereof, the 2004 Bonds will have been duly and validly authorized and issued in accordance with the General Resolution;

D. A written order as to the authentication, registration and delivery of the 2004 Bonds and the application of the proceeds thereof, signed by an Authorized Officer;

E. A Certificate of the Commission to the effect that:

(i) all payments into the respective funds and accounts provided for in the General Resolution and any Related Supplemental Resolution respecting Bonds theretofore issued and then Outstanding have been made in full to the date of issuance and delivery of the 2004 Bonds and no Event of Default under the General Resolution or any Related Supplemental Resolution is now existing; and

(ii) the Revenues of the type set forth in subsection (i) of the definition of "Revenues" in Section 1.02 of the General Resolution, collected by the Commission for the last Fiscal Year preceding the date of issuance of the 2004 Bonds have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 Bonds and the Prior Bonds; or

(iii) the Revenues (excluding proceeds of any Bonds and earnings thereon) collected by the Commission for the last Fiscal Year preceding the date of issuance of the 2004 Bonds, plus Projected Revenues (as defined below) have been not less than 100% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 Bonds and the Prior Bonds; and (b) Projected Revenues have not been greater than 20% of the largest amount of Debt Service due in any Fiscal Year thereafter on the 2004 Bonds and the Prior Bonds. For the purposes of this subsection (iii), Projected Revenues may include any Revenues which were not in effect or which were not pledged under the General Resolution during the last Fiscal Year, but which have been adopted, charged and pledged prior to or contemporaneously with the issuance of the 2004 Bonds; and

F. An executed copy of the Trust Indenture, or if no Trustee has been appointed, a copy of the Agreement between the Commission and the Registrar and Paying Agent.

Section 2.08. Prospective Amendments Put Into Effect. The Commission hereby determines that the Prospective Amendments shall be put into effect upon the adoption of this Resolution.

Section 2.09. Pledge of Excess Lottery Proceeds. Pursuant to the authorization contained in Senate Concurrent Resolution 1001, the Commission hereby pledges the funds deposited on or after July 1, 2004 in the higher education improvement fund created under WV Code § 29-22-18a to the payment of the 2004 Bonds and the Prior Bonds.

Section 2.10. Consolidation of Financings. One of the purposes of this Supplemental Resolution is to effect a consolidation of financings previously issued by the Board of Trustees and the Board of Directors and the Commission as the successor thereto, as authorized by Section 10.08 of the General Resolution. The Treasurer shall deposit the funds described in Section 2.09 hereof into the capital improvement funds held for State Institutions of Higher Education and shall apply the same to the payment of principal or redemption price of and interest on the Bonds as they come due.

ARTICLE III

PROVISIONS RELATING TO THE 2004 BONDS REQUIRED BY BOND INSURER

Section 3.01. Provisions Required by Bond Insurer. All provisions and terms required by the Bond Insurer for the 2004 Bonds shall be set forth separately in a schedule (the "Insurance Schedule") to the Certificate of Determination. In the event any provision of the Certificate of Determination, including such Insurance Schedule, conflicts with any terms and provisions of the Resolution, the terms and provisions of the Certificate of Determination, including such schedule, shall control.

ARTICLE IV

FUNDS AND ACCOUNTS; APPLICATION OF 2004 BOND PROCEEDS

Section 4.01. Funds and Accounts. (A) There are hereby created by the Commission and ordered established with the Trustee (if any), Registrar and Paying Agent the following funds and accounts in connection with the 2004 Bonds;

(i) 2004 Bond Fund (Higher Education Facilities), and therein;

(a) 2004 Bonds (Higher Education Facilities) Interest Account; and

(b) 2004 Bonds (Higher Education Facilities) Principal Account; and

(c) 2004 Bonds (Higher Education Facilities) Redemption Account.

(B) There are hereby created by the Commission and ordered established with the Trustee (if any), Registrar and Paying Agent the following funds in connection with the 2004 Bonds;

(i) 2004 Bonds (Higher Education Facilities) Bond Proceeds Fund; and

(ii) 2004 Bonds (Higher Education Facilities) Costs of Issuance Fund

Section 4.02. Application of 2004 Bond Proceeds. The net proceeds of the sale of the 2004 Bonds shall initially be deposited in the 2004 Bonds (Higher Education Facilities) Bond Proceeds Fund to be held by the Trustee (if any), and if none by the Municipal Bond Commission. Thereafter, such proceeds or portions thereof shall be applied by the Trustee (if any), and if none by the Municipal Bond Commission, as follows:

(i) All amounts, if any, paid as accrued interest on the 2004 Bonds from their date to the date of delivery of the 2004 Bonds shall be deposited in the 2004 Bonds (Higher Education Facilities) Interest Account;

(ii) A sum equal to the Costs of Issuance of the 2004 Bonds shall be deposited in the 2004 Bonds (Higher Education Facilities) Costs of Issuance Fund;

(iii) A sum equal to the premium for purchase of the Bond Insurance Policy, if any, shall be paid directly to the Insurer; and

(iv) The balance of the proceeds of the 2004 Bonds shall be deposited in the 2004 Bonds (Higher Education Facilities) Bond Proceeds Fund (which Fund may contain one or more subaccounts).

Section 4.03. Flow of Funds. So long as any 2004 Bonds are Outstanding, amounts deposited and to be deposited in the funds and accounts established by Section 4.01 hereof shall be applied by the Trustee (if any), and if none by the Municipal Bond Commission in the manner and order of priority as set forth herein and in Article VII of the General Resolution.

Section 4.04. Disbursements. The proceeds of the 2004 Bonds deposited in the 2004 Bonds (Higher Education Facilities) Bond Proceeds Fund shall be disbursed by the Trustee, if any, or if none by the Treasurer upon proper requisition by an Authorized Officer for payment of costs of the 2004 Projects. The proceeds of the 2004 Bonds deposited in the 2004 Bonds (Higher Education Facilities) Costs of Issuance Fund shall be disbursed by the Trustee, if any, or if none by the Treasurer upon requisition by an Authorized Officer. Any funds remaining in the 2004 Bonds (Higher Education Facilities) Costs of Issuance Fund 180 days after the initial issuance of the 2004 Bonds shall be transferred to the 2004 Bonds (Higher Education Facilities) Bond Proceeds Fund.

Section 4.05. Arbitrage Covenant. Neither the Trustee (if any), and if none by the Municipal Bond Commission, nor the Commission shall use or direct or permit the use of any moneys of the Commission in its possession or control in any manner which would cause any 2004 Bonds to be an "arbitrage bond" within the meaning of such term in Sections 103 and 148 of the Code.

Section 4.06. Tax Certificate. Notwithstanding any provision of the Resolution, the Commission shall observe its covenants, representations and agreements contained in the Tax Certificate. In the event any provision of the Resolution conflicts with any provision of the Tax Certificate, the provisions of the Tax Certificate shall govern.

ARTICLE V

GENERAL COVENANTS OF THE COMMISSION

Section 5.01. General. Except to the extent amended or modified by Section 1.03 hereof, the covenants contained in Article VI of the General Resolution are hereby continued, approved, ratified and confirmed, shall apply fully to the 2004 Bonds, and are incorporated herein by reference as a part hereof.

Section 5.02. Covenants. All covenants, stipulations, obligations and agreements of the Commission contained herein and contained in the Resolution shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Commission to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Commission and its successors from time to time and upon any Commission or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Commission or the officials thereof by the provisions hereof and by the Resolution shall be exercised or performed by the Commission or by such officers, or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the 2004 Bonds or the Bond Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Commission in his or her individual capacity, and neither the member of the Commission nor any officer executing the 2004 Bonds shall be liable personally on the 2004 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

ARTICLE VI

APPROVAL OF DOCUMENTS AND APPOINTMENT OF FIDUCIARIES

Section 6.01. Approval of Bond Documents. The Chairman or Vice Chairman is authorized, for and on behalf of Commission, to approve the final terms of the 2004 Bonds within the financing parameters established by Section 2.03 of this Resolution, and to negotiate, execute and deliver all documentation related to the issuance of the 2004 Bonds, including without limitation the Bond Documents, bond insurance documentation, any agreement with any Service Provider, any interest and other rate exchange agreements, interest or other rate swap transactions, basis swap transactions, forward rate transactions, bond options, interest rate options, cap transactions, floor transactions, collar transactions, investment agreements, guaranteed investment contracts, debt service deposit agreements, float agreements, any other similar transactions or agreements (including without limitation any option with respect to any of the foregoing) or any combination of the foregoing upon the terms and conditions as such officers may approve, such approval to be conclusively evidenced by the execution of such documents by any of such officers.

Section 6.02. Approval of Distribution of Preliminary Official Statement and Official Statement. The distribution of the Preliminary Official Statement is hereby approved. The Chairman, Vice Chairman or the Secretary is hereby authorized and directed to execute and deliver a final Official Statement on behalf of the Commission, which shall be in substantially the form of the Preliminary Official Statement with such terms and conditions as may be required to reflect the terms of the sale of the Bonds and as the Chairman, Vice Chairman or Secretary, as the case may be, may approve. The execution of the Official Statement by the Chairman, Vice Chairman or Secretary, as the case may be, shall be conclusive evidence of such approval. Copies of the Official Statement are hereby authorized to be prepared and furnished to the Original Purchaser for distribution. The distribution by the Original Purchaser of the Preliminary Official Statement (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved.

Section 6.03. Appointment of Fiduciaries. The Certificate of Determination shall appoint and designate the Trustee (if any), Registrar and Paying Agent for the 2004 Bonds.

Section 6.04. Continuing Disclosure Agreement. So long as any of the 2004 Bonds remain Outstanding, the Commission shall provide certain annual financial information and material events notices regarding the Commission as described in paragraph (b)(5)(i) of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission. The Issuer authorizes and directs the Director of Finance and Facilities to take all actions with respect to this undertaking as prescribed by the Continuing Disclosure Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. General Resolution. This Resolution is supplemental to the General Resolution and all provisions of said General Resolution, unless clearly inapplicable or altered hereby, shall apply to the 2004 Bonds, this Resolution and matters relating thereto as if set forth verbatim herein. In the event of any conflict between the General Resolution and this Resolution, this Resolution shall control. This Resolution, the General Resolution, the Bond Indenture and the Certificate of Determination, to the extent applicable, shall and must be read as a single document and shall supersede all prior resolutions, orders and understandings, both written and oral, by the Commission, with respect to the subject matter hereof.

Section 7.02. Incidental Action. The execution and delivery of the 2004 Bonds and the execution, delivery and due performance of the Bond Documents and the Official Statement are hereby in all respects approved, authorized, ratified and confirmed including all acts heretofore taken in connection with the issuance of the 2004 Bonds, and it is hereby ordered that the Chairman, Vice Chairman, Secretary and other members and officers of the Commission execute and deliver such other documents, certificates, agreements and instruments, and take such other Action as may be required or desirable to carry out the purposes of this Resolution, the 2004 Bonds and the aforesaid instruments, including, but limited to, execution and delivery of any commitment for bond insurance.

Section 7.03. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof, or the 2004 Bonds issued pursuant hereto, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

Section 7.04. Governing Law. This Resolution and the 2004 Bonds are contracts made under the laws of the State of West Virginia and shall be governed and construed in accordance with such laws.

Section 7.05. Notices. (A) Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall, be deemed sufficiently given or served if given in writing, mailed by registered or certified mail, postage prepaid or by overnight courier service and addressed as follows:

(i) IF TO THE COMMISSION, ADDRESSED TO:

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Suite 700
Charleston, West Virginia 25301
Attention: Director of Finance and Facilities

(ii) IF TO THE TRUSTEE (if any), REGISTRAR OR PAYING AGENT ADDRESSED TO: As it may appear in the Certificate of Determination

(iii) IF TO THE OWNER OF A 2004 BOND, ADDRESSED TO: Such Holder at the address shown on the books of the Registrar kept pursuant hereto

(iv) IF TO THE ORIGINAL PURCHASER, ADDRESSED TO:

Citigroup Global Markets, Inc.
One Liberty Place
1650 Market Street, 45th Floor
Philadelphia, PA 19103
Attn: Public Finance Group

(v) IF TO BOND INSURER, ADDRESSED TO: As its address may appear in the Bond Insurance Policy

(B) The Commission, the Trustee (if any), the Registrar, the Paying Agent, the Original Purchaser, the Municipal Bond Commission or the Bond Insurer may from time to time by notice in writing to the others designate a different address or addresses for notice hereunder.

(C) In connection with any consent required to be obtained from any Owner of 2004 Bonds, the Commission shall establish a record date to determine the ownership of any 2004 Bonds for purposes of obtaining such consent, and shall give Depository Trust Company at least 15 calendar days advance notice of the record date so established.

(D) Any notice required to be given by the Commission pursuant to any provision of the Resolution shall also be given to the Bond Insurer.

Section 7.06. Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 7.07. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 4th day of June, 2004.

Chairman

Secretary

308299

EXHIBIT A

FORM OF 2004 BOND

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE REFUNDING BOND
(HIGHER EDUCATION FACILITIES), 2004 SERIES B

No. R-_____ $_____

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
_____	_____	_____	_____

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: $_____

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), an agency of the State of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on October 1, 2004, and semiannually thereafter on April 1 and October 1 of each year (each an "Interest Payment Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Resolution.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by _____, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (15 days before the interest payment dates of April 1 and October 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by _____, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date.

Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal corporate trust office of the Paying Agent.

This Bond is one of an issue of a Series of Bonds in the aggregate principal amount of not to exceed $160,000,000 (the "Bonds") authorized and issued to provide funds to be expended, together with other moneys available therefor, for refunding of certain outstanding revenue bonds issued by the predecessor of the Commission and paying Costs of Issuance of the 2004 Bonds, all pursuant to a General Resolution adopted by the Commission on September 9, 1992, and an Resolution adopted by the Commission on _____, 2004 (collectively, the "Resolution"). The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 18, Articles 12B and Chapter 18B, Articles 1, 2 and 10 of the West Virginia Code of 1931, as amended, and the Refunding Act (collectively, the "Act").

This Bond and all Bonds of this issue are payable solely, equally and ratably from the Revenues (as such term is defined in the Resolution) on a parity in all respects with the Prior Bonds described below. Reference is hereby made to the Resolution as the same may be further amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Commission and the Registered Owners of the Bonds and any subsequently issued Additional Bonds. Certified copies of the Resolution are on file at the office of the Commission in the City of Charleston, West Virginia.

This Bond is a special obligation of the Commission, payable together with the Prior Bonds hereinafter described and any Additional Bonds which may hereafter be issued, solely from the sources pledged under the Resolution. The bonds of the series of which this Bond is one, as to both principal and interest, shall not constitute a debt or a pledge of the faith and credit or taxing power of the State of West Virginia or of any county, municipality or any other political subdivision of said State, and the owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of said State for the payment of the principal thereof or interest thereon, but the Bonds, together with any Additional Bonds which may subsequently be issued on a parity therewith, shall be payable equally and ratably solely from the sources pledged under the Resolution.

The Bonds are issued on a parity in all respects with the Commission's outstanding "Prior Bonds" (as defined in said Resolution) and other Additional Bonds which may hereafter be issued pursuant to the General Resolution.

The Bonds of this issue are subject to redemption prior to their stated maturity dates, as provided in the Resolution and as set forth in the following lettered paragraphs:

The Bonds maturing on _____ (the "Term Bonds"), are subject to mandatory redemption prior to maturity in part at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the Mandatory Redemption Date, beginning on _____ respectively, for the Term Bonds, and on each _____1 thereafter, in annual principal amounts as follows:

For the Term Bonds maturing on _____:

Year	Amount

For the Term Bonds maturing on _____:

Year	Amount

The principal amount of the Bonds delivered to or purchased by the Paying Agent shall reduce pro tanto the principal amount of such series of Term Bonds to be redeemed on the Mandatory Redemption Date with respect to such maturity next following such delivery or purchase.

Beginning on _____, the Bonds maturing on and after _____, shall be subject to redemption prior to maturity, at the option of the Issuer, in whole, or in part, on any Business Day, by series and in order of maturity selected by the Issuer and by lot within a maturity in multiples of $5,000, at the Redemption Prices (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued interest to the date fixed for redemption:

Redemption Periods (Dates Inclusive)	Redemption Prices

In the event of any redemption of less than all outstanding Bonds, the maturities to be redeemed shall be selected by the Registrar at the direction of the Commission, and Bonds to be redeemed shall be selected by lot within a maturity, or in such other manner deemed appropriate by the Registrar. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and maturity dates. Notice of the call for any redemption, unless waived by the Registered Owner, shall be given by the Registrar, by mailing a redemption notice, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of any Bond or portions of Bonds to be redeemed in whole or in part at the address shown on the registration books of the Commission maintained by the Registrar, for registration and transfer of the Bonds under the Resolution, and as otherwise prescribed in the Resolution, provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of Additional Bonds which shall be equally and ratably secured under the Resolution with the Bonds.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Resolution. Neither the Commission nor the Registrar shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

IT IS HEREBY FURTHER CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due form, time and manner as required by law.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[The Remainder of Page Intentionally Left Blank]

IN TESTIMONY WHEREOF, the Commission has caused this Bond to be executed by and on its behalf by the manual or facsimile signature of the Authorized Officer of the Commission, and has caused this Bond to be authenticated by the manual signature of an authorized officer of the Registrar, without which authentication this Bond shall not be valid nor entitled to the benefits of the Resolution, all as of the Bond Date stated above.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: _____
Bob Wise, Governor of the State of West Virginia

By: _____
J. Michael Mullen, Chancellor

By: _____
Secretary of State of the State of West Virginia

REGISTRAR'S AUTHENTICATION CERTIFICATE

The undersigned Registrar hereby certifies that this is one of the 2004 Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below. Attached hereto is the complete text of the opinion of Spilman Thomas & Battle, PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for such Bonds.

Date of Authentication: _____

_____, as Registrar

By: _____
Its Authorized Officer

STATEMENT OF INSURANCE

_____ Insurance Corporation (the "Insurer") has issued a policy containing the following provisions, such policy being on file at (Trustee's (if any), Registrar and Paying Agent Name and Address).

The Insurer, in consideration of the payment of the premium and subject to the terms of this policy, hereby unconditionally and irrevocably guarantees to any owner, as hereinafter defined, of the following described Obligations, the full and complete payment required to be made by or on behalf of the Issuer to (Trustee's (if any), Registrar and Paying Agent Name) or its successor (the "Paying Agent") of an amount equal to (i) the principal of (either the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on the Obligations (as that term is defined below) as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed hereby shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law. The amounts referred to in causes (i) and (ii) of the preceding sentence shall be referred to herein collectively as the "Insured Amounts." "Obligations" shall mean:

State of West Virginia
Higher Education Policy Commission
Revenue Refunding Bonds
(Higher Education Facilities), 2004 Series B

Upon receipt of telephonic or telegraphic notice, such notice subsequently confined in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by the Insurer from the Paying Agent or any owner of an Obligation the payment of an Insured Amount for which is then due, that such required payment has not been made, the Insurer on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with _____, or its successor, sufficient for the payment of any such Insured Amounts which are then due. Upon presentment and surrender of such Obligations or presentment of such other proof of ownership of the Obligations, together with any appropriate instruments of assignments to evidence the assignment of the Insured Amounts due on the Obligations as are paid by the Insurer, and appropriate instruments to effect the appointment of the Insurer as agent for such owners of the Obligations in any legal proceeding related to payment of Insured Amounts on the Obligations, such instruments being in a form satisfactory to _____, shall disburse to such

owners or the Paying Agent payment of the Insured Amounts due on such Obligations, less any amount held by the Paying Agent for the payment of such Insured Amounts and legally available therefor. This policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Obligation.

As used herein, the term "owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer, or any designee of the Issuer for such purpose. The term owner shall not include the Issuer or any party whose agreement with the Issuer constitutes the underlying security for the Obligations.

Any service of process on the Insurer may be made to the Insurer at its offices located at _____ and such service of process shall be valid and binding.

This policy is non-cancellable for any reason. The premium on this policy is not refundable for any reason including the payment prior to maturity of the Obligations.

ASSIGNMENT

Social Security or Other Identifying Number of Assignee

_____

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto_____

_____

_____the within Bond and does hereby irrevocably constitute and appoint

_____

_____

_____ to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

_____

SIGNATURE GUARANTEED:

_____

(Bank, Trust Company or Finn)

_____

(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

SECOND CONSOLIDATED SUPPLEMENTAL RESOLUTION

OF THE

STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

Adopted: July 29, 2004

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION SUPPLEMENTING THE GENERAL RESOLUTION OF THE COMMISSION ADOPTED SEPTEMBER 9, 1992, BY CONSOLIDATED SUPPLEMENTAL RESOLUTION OF THE COMMISSION ADOPTED JUNE 4, 2004.

WHEREAS, the Higher Education Policy Commission (the "Commission"), an agency of the State of West Virginia (the "State"), adopted the First Consolidated Supplemental Resolution on June 4, 2004 (the "June 4, 2004 Supplement");

WHEREAS, the recitals contained in the June 4, 2004 Supplement are incorporated herein by reference as though fully set out herein;

WHEREAS, the Legislature of the State enacted House Bill 101 on March 21, 2004 ("HB 101"), which amended portions of the Act with respect to the fees to be charged to students at Institutions of Higher Education in West Virginia (the "Institutions") and consolidated a variety of fees (including tuition and registration fees which are pledged as Revenues under the General Resolution (the "Pledged Fees")) into several discrete categories;

WHEREAS, pursuant to HB 101 the Pledged Fees are consolidated (along with other fees) into the general capital fees category provided, however, that HB 101 requires that the Pledged Fees previously charged by the Institutions to support Bonds issued prior to the effective date of HB 101 (March 21, 2004), remain in effect in amounts not less than the amounts in effect as of such effective date until such time as the Bonds payable from such fees are no longer Outstanding;

WHEREAS, it is deemed necessary and desirable to add to the definition of Revenues under the General Resolution the equivalent of such Pledged Fees to pay the debt service on outstanding Bonds and any Additional Bonds issued under the General Resolution, including the 2004 B Bonds authorized by the June 4, 2004 Supplement; and

WHEREAS, Section 10.01 of the General Resolution provides that the Commission may adopt, execute and deliver a Supplemental Resolution without notice to or the consent of the Owners of the Bonds or any Credit Provider in order to (a) add to the covenants and agreements of the Commission in the General Resolution other covenants and agreements to be observed by the Commission which are not contrary to or inconsistent with the General Resolution as theretofore in effect and (b) subject to the lien and pledge created or to be created by the General Resolution any other revenues or assets other than the Revenues;

WHEREAS, Spilman Thomas & Battle, PLLC, Bond Counsel with respect to the 2004 Bonds has delivered to the Commission its opinion to the effect that the execution and delivery of this Supplemental Resolution is permitted under the General Resolution and the Act, and that the provisions of this Supplemental Resolution will not adversely affect the excludability from gross income of the recipients thereof on the Tax-Exempt Bonds for federal income tax purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

Section 1.01. Issuance of the Proposed Refunding Bonds Amendment to the General Resolution. The General Resolution is hereby amended by adding to the definition of "Revenues" a new clause (vi) to read as follows:

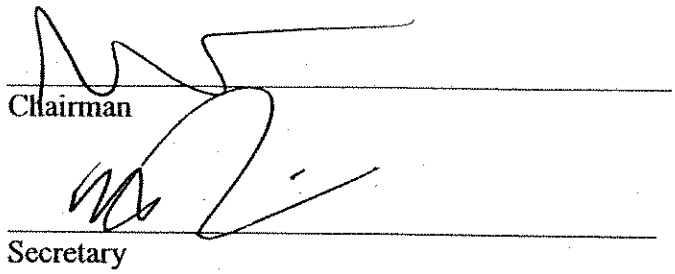
(vi) all of the tuition and registration fees in effect as of March 21, 2004, and pledged under the General Resolution, which after such date are a component part of the general capital fees of the Institutions.

Section 1.02. Additional Covenant of the Commission. The Commission hereby covenants and agrees that the Revenues described in clause (vi) of the definition thereof may not be reduced until all the Bonds payable from such Revenues are no longer Outstanding under the General Resolution.

Section 1.03. Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 1.04. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 29th day of July, 2004.



Chairman

Secretary

320676

THIRD CONSOLIDATED SUPPLEMENTAL RESOLUTION

OF THE

STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

Adopted: August 20, 2004

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION SUPPLEMENTING THE GENERAL RESOLUTION OF THE COMMISSION ADOPTED SEPTEMBER 9, 1992, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME

WHEREAS, the Higher Education Policy Commission (the "Commission"), an agency of the State of West Virginia (the "State"), adopted the First Consolidated Supplemental Resolution on June 4, 2004 (the "June 4, 2004 Supplement"), authorizing the issuance of the Commission's Revenue Bonds (Higher Education Facilities) 2004 Series B (the "2004 B Bonds") and amending and supplementing the General Resolution;

WHEREAS, the recitals contained in the June 4, 2004 Supplement are incorporated herein by reference as though fully set out herein;

WHEREAS, the Commission further amended and supplemented the General Resolution by the Second Consolidated Resolution adopted on July 29, 2004 (the "Second Consolidated Resolution");

WHEREAS, the Commission authorized the issuance of its Revenue Refunding Bonds in an amount not to exceed $18,000,000 (the "Proposed Refunding Bonds") by resolution of the Commission adopted on April 2, 2004 (the "Eleventh Supplemental University Resolution");

WHEREAS, as of the date of adoption of this Resolution the Proposed Refunding Bonds have not been issued;

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the General Resolution as amended and supplemented from time to time to the date of adoption of this Resolution:

WHEREAS, the Commission has been advised that it may be beneficial to issue the Proposed Revenue Bonds as a part of or in conjunction with the 2004 B Bonds; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION, AS FOLLOWS:

Section 1.01. Issuance of the Proposed Refunding Bonds. The Commission hereby determines that the Proposed Refunding Bonds shall be issued (pursuant to the provisions for the issuance thereof prescribed by the Eleventh University Supplemental Resolution) in conjunction with the issuance of the 2004 B Bonds either as a separate series of Bonds or combined with the 2004 B Bonds, provided, further, that such Proposed Refunding Bonds, whether issued in combination with the 2004 B Bonds or as a separate series of Bonds, shall be payable from the Revenues. In the event that the Proposed Refunding Bonds are combined with the 2004 B Bonds, then the maximum principal amount of such Bonds shall not exceed $180,000,000.00.

Section 1.02. Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the Commission and its respective successors and assigns subject to the limitations contained herein.

Section 1.03. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 20th day of August, 2004.

Chairman

Secretary

316359

$167,260,000
STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

SECRETARY'S CERTIFICATE

I, Michael S. Garrison, Secretary of the West Virginia Higher Education Policy Commission (the "Commission") hereby certify that copies of the Eleventh Supplemental Resolution of the Commission adopted April 2, 2004 (the "Eleventh Supplemental Resolution"), the Twelfth Supplemental Resolution of the Commission adopted June 4, 2004 (the "Twelfth Supplemental Resolution"), the First Consolidated Resolution of the Commission adopted June 4, 2004 (the "First Consolidated Resolution"), the Second Consolidated Resolution of the Commission adopted July 29, 2004 (the "Second Consolidated Resolution"), and the Third Consolidated Resolution of the Commission adopted August 20, 2004, included in the transcript of documents for the above captioned Bonds are true, correct and complete and identical to the originals thereof.

WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION

By: _____
Its: Secretary

321966

TAX COMPLIANCE CERTIFICATE

of

STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION, as Issuer

State of West Virginia Higher Education Policy Commission
Revenue Bonds
(University Facilities)
2004 A Bonds

and

State of West Virginia Higher Education Policy Commission
Revenue Bonds
(Higher Education Facilities)
2004 B Bonds

TAX COMPLIANCE CERTIFICATE

In connection with the issuance by the Higher Education Policy Commission, a body corporate and governmental instrumentality of the State of West Virginia (the **"Commission"**), of its $85,650,000.00 State of West Virginia Higher Education Policy Commission Revenue Bonds (University Facilities) 2004 Series A Bonds (the "**2004 A Bonds**"), and its $167,260,000.00 State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B (the **"2004 B Bonds"**, and the 2004 A Bonds and the 2004 B Bonds are sometimes referred to herein as the "**Bonds**") and in furtherance of the covenants of the Commission contained in the Resolution and the Certificate of Determination (the **"Commission Documents"**), and pursuant to Treasury Regulations Section 1.148-2(b)(2), the Commission makes and enters into the following Tax Certificate.

SECTION 1. DEFINITIONS. Capitalized terms, if defined herein shall have the meanings set forth herein, or in Appendix I or, where not so defined, in the Resolution.

SECTION 2. REPRESENTATIONS.

(a) Purposes—2004 A Bonds. The 2004 A Bonds are being issued on the Date of Issue to provide moneys which will be used for the purposes of (i) providing capital improvements at institutions of higher education located throughout the State of West Virginia (the "**Project**"); and (ii) pay the costs associated with the issuance of the 2004 A Bonds. Immediately upon issuance, the 2004 A Bonds will be exchanged for similar amounts of 2004 B Bonds.

(b) Purposes--2004 B Bonds. The 2004 B Bonds are being issued on the Date of Issue to provide moneys which will be used for the purposes of (i) providing capital improvements at institutions of higher education located throughout the State of West Virginia (the "**Project**"); (ii) advance refunding of a portion of the State University System Revenue Bonds, Series 1996 (Marshall University Library/Information Center)(the "**1996 University Bonds**"), issued by the State of West Virginia, University of West Virginia Board of Trustees (the "**Refunded Bonds**"); (iii) currently refunding the 2004 A Bonds; and (iv) paying the costs associated with the issuance of the 2004 B Bonds. A portion of the 2004 B Bonds are being issued on an advance refunding basis in order to achieve a reduction in debt service costs, with the Refunded Bonds to be retired on April 1, 2006.

(c) Statement as to Facts, Estimates and Circumstances. The facts and estimates set forth in this Tax Certificate on which the Issuer's expectations as to the amount and use of the Gross Proceeds of each series of the Bonds are based are made to the best of the knowledge and belief of the undersigned officer of the Issuer, and the Issuer's expectations are reasonable.

(d) Responsible Person. The undersigned is an officer of the Issuer responsible for the issuance of the Bonds, and has made due inquiry with respect to and is fully informed as to the matters set forth herein.

(e) Same Issue—2004 A Bonds and 2004 B Bonds. The 2004 A Bonds are being sold by the Issuer, and are being purchased by the Senior Managing Underwriter in a private placement. The Underwriter is then immediately surrendering, exchanging and retiring the 2004 A Bonds for 2004 B Bonds of similar denominations, interest rates, maturity, and principal amount. At no time will the 2004 A Bonds and 2004 B Bonds be outstanding at the same time. No other obligations will be sold at substantially the same time as the 2004 A Bonds and the 2004 B Bonds. The 2004 A Bonds and 2004 B Bonds are being issued on the Date of Issue. The 2004 A Bonds are being exchanged, on a bond by bond basis, for 2004 B Bonds. Since the 2004 B Bonds are currently refunding the 2004 A Bonds, the 2004 A Bonds and the 2004 B Bonds are the same series of bonds, as defined in Treas. Reg. §1.150-1(c)(3)(1).

SECTION 3. REASONABLE EXPECTATIONS OF THE ISSUER AS TO USE OF BOND PROCEEDS. The Issuer makes the following representations and statements of fact relative to the use of proceeds of the Bonds:

(a) Application of Sale Proceeds—2004 Series A Bonds.

(1) Sale Proceeds; No Overissuance. The Sale Proceeds of the 2004 Series A Bonds will be $88,495,606.35, which amount consists of the aggregate principal amount of the 2004 A Bonds of $85,650,000.00, plus net premium of $2,845,606.35. The Sale Proceeds and the investment earnings thereon do not exceed the amount necessary for the purpose set forth in Section 2(a) hereof by more than $50,000.

(2) Costs of Issuance. An amount of the Sale Proceeds of the 2004 A Bonds equal to $110,630.35 will be deposited in the Costs of Issuance Fund and will be expended within twelve months after the Date of Issue to provide for the Costs of Issuance incurred in connection with the issuance of the 2004 Series A Bonds, including, but not limited to Bond Counsel fees, rating agency fees, trustee fees and printing costs. Any unspent amounts remaining in the Costs of Issuance Fund after the expiration of six months from the Closing Date will thereupon be transferred into the Bond Proceeds Fund.

(3) Underwriter's Discount. An amount of the Sale Proceeds of the 2004 A Bonds equal to $373,858.98 will be used on the date hereof for the payment of the underwriter's discount with respect to the 2004 A Bonds.

(4) Bond Proceeds Fund. An amount of the Sale Proceeds of the 2004 A Bonds equal to $88,011,117.02 will be used for the capital improvements and deposited in the Bond Proceeds Fund.

(5) Expenditure Test. The Issuer expects that the Sale Proceeds deposited into the Bond Proceeds Fund will be allocated to capital expenditures within 24 months of the Date of Issue. As of the close of the 3-year period

beginning on the Issuance Date, at least 85% of the Net Sale Proceeds will have been used to construct the capital improvements.

(6) Time Test. Within six months of the Date of Issue, the Issuer expects that it will enter into binding obligations with third parties obligating the Issuer to expend at least five percent of the Sale Proceeds deposited into the Bond Proceeds Fund for the capital improvements.

(7) Due Diligence Test. The Issuer expects that it will proceed with due diligence to the completion of the capital improvements and the allocation of the Net Sale Proceeds of the 2004 Series A Bonds to expenditures.

(8) No Other Funds. Other than the Escrow Fund, the Bond Proceeds Fund and the Costs of Issuance Fund, no Fund or Account which secures or otherwise relates to the 2004 Series A Bonds has been established, nor are any funds or accounts expected to be established, pursuant to any instrument.

(b) Application of Sale Proceeds—2004 Series B Bonds.

(1) Sale Proceeds; No Overissuance. The Sale Proceeds of the 2004 Series B Bonds will be $173,278,720.40, which amount consists of the aggregate principal amount of the 2004 Series B Bonds of $167,260,000.00, plus net premium of $6,018,720.40 (which amount also includes the Sale Proceeds of the 2004 A Bonds which are being issued and immediately exchanged for 2004 B Bonds). The Sale Proceeds and the investment earnings thereon do not exceed the amount necessary for the purpose set forth in Section 2(b)hereof by more than $50,000.

(2) Costs of Issuance. An amount of the Sale Proceeds of the 2004 Series B Bonds equal to $216,042.40 (which amount includes the Costs of Issuance of the 2004 A Bonds which are being issued and immediately exchanged for 2004 B Bonds) will be deposited into the Costs of Issuance Fund and will be expended within twelve months after the Date of Issue to provide for the Costs of Issuance incurred in connection with the issuance of the 2004 Series B Bonds, including, but not limited to Bond Counsel fees, rating agency fees, trustee fees and printing costs. Any unspent amounts remaining in the Costs of Issuance Fund after the expiration of six months from the Closing Date will thereupon be transferred into the Bond Proceeds Fund.

(3) Underwriter's Discount. An amount of the Sale Proceeds equal to $723,747.00 (which amount includes the Underwriter's Discount on the 2004 A Bonds which are being issued and immediately exchanged for 2004 B Bonds) will be used on the date hereof for the payment of the underwriter's discount with respect to the 2004 Series B Bonds.

(4) Additional Proceeds. An amount of the Sale Proceeds of the 2004 Series B Bonds equal to $3,918.45 (which amount includes the Additional

Proceeds of the 2004 A Bonds which are being issued and immediately exchanged for 2004 B Bonds) consisting of Additional Proceeds (the "Minor Portion") will be deposited into the Bond Proceeds Fund.

(5) 1996 Escrow Fund. An amount of the Sale Proceeds equal to $10,178,618.23 (which amount includes $0.23 which will be added to the Escrow Fund by the Bond Trustee) representing the amount that will be sufficient to redeem the 1996 University Bonds, will be delivered to the Escrow Agent and deposited in the 1996 Escrow Fund.

(6) Bond Proceeds Fund. An amount of the Sale Proceeds of the 2004 Series B Bonds equal to $161,478,453.75 (which amount includes $3,918.45 from the Additional Proceeds, and which amount also includes the Bond Proceeds Fund from the 2004 A Bonds which are being issued and immediately exchanged for 2004 B Bonds) will be used for the capital improvements and deposited in the Bond Proceeds Fund.

(7) Expenditure Test. The Issuer expects that the Sale Proceeds deposited into the Bond Proceeds Fund will be allocated to capital expenditures within 24 months of the Date of Issue. As of the close of the 3-year period beginning on the Issuance Date, at least 85% of the Net Sale Proceeds will have been used to construct the capital improvements.

(8) Time Test. Within six months of the Date of Issue, the Issuer expects that it will enter into binding obligations with third parties obligating the Issuer to expend at least five percent of the Sale Proceeds deposited into the Bond Proceeds Fund for the capital improvements.

(9) Due Diligence Test. The Issuer expects that it will proceed with due diligence to the completion of the capital improvements and the allocation of the Net Sale Proceeds of the 2004 Series B Bonds to expenditures.

(10) No Other Funds. Other than the Escrow Fund, the Bond Proceeds Fund and the Costs of Issuance Fund, no Fund or Account which secures or otherwise relates to the 2004 Series B Bonds has been established, nor are any funds or accounts expected to be established, pursuant to any instrument.

(c) Other Representations.

(1) Qualified Governmental Unit. All property financed with proceeds of the Bonds will be held by or on behalf of a qualified Governmental Unit, and the capital improvements financed with the proceeds thereof will be operated solely for public purposes as a governmental activity.

(2) No prohibited Use of Proceeds. No portion of the capital improvements will consist of any airplane, skybox or other luxury box, facility primarily used for

gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(3) No Private Payments. No portion of the payments of principal of or interest on the Bonds will be made, financed or secured, directly or indirectly, by payments or property used in any trade or business of any person other than the Issuer or a qualified Governmental Unit. The Issuer will not permit any portion of the payment of the principal or interest on the Bonds to be secured, directly or indirectly, by (i) interests in property or (ii) payments in respect of such property, which property is used or to be used in any trade or business of any person other than the Issuer. The Issuer will not permit any portion of the payment of the principal or interest on the Bonds to be derived, directly or indirectly by payments (whether or not to the Issuer) in respect of property or borrowed money, used or to be used in any trade or business of any persons other than the Issuer.

(4) Activities within Facilities. The capital improvements financed with proceeds of the Bonds will be used only in activities directly related to the Issuer's or the Governmental Units' exempt governmental purpose. No other person will own or use the capital improvements either directly or indirectly, including use through a management agreement, and neither the Issuer nor any other state or local government unit having an ownership interest in the capital improvements will transfer ownership of the capital improvements while the Bonds are outstanding.

SECTION 4. ARBITRAGE REPRESENTATIONS. The Issuer makes the following representations and statements of fact and expectation on the basis of which it is not expected that the proceeds of the Bonds will be used in a manner that will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code:

(a) Representations of the Issue Price of each series of the Bonds and the Yield on each series of the Bonds are based on the certificate executed by the Purchaser of even date herewith. The Issuer is not aware of any facts or circumstances that would cause them to question the accuracy of the representations made by the Purchaser.

(b) No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of the Issuer used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher than the Yield of the Bonds.

(c) Other than as described in this Tax Certificate, the Bonds are not and will not be part of a transaction or series of transactions that (i) attempt to circumvent the provisions of Section 148 of the Code, or any successor thereto, and the regulations promulgated thereunder which enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

(d) No other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of funding and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as the Bonds or which will be paid directly or indirectly from proceeds of the sale of the Bonds.

(e) The Issuer has not been notified of the listing or proposed listing of the Issuer by the Internal Revenue Service as an issuer that may not certify its bonds.

(f) The issuance of the Bonds will not involve the use of a "device" or an "abusive transaction" within the meaning of Section 149(d)(4) of the Code.

(g) In connection with the Bonds, there has not been created or established, and the Issuer does not expect that there will be created or established, any sinking fund, pledged fund or similar fund (other than as specifically identified in this Tax Certificate), including without limitation any arrangement under which money, securities or obligations are pledged directly or indirectly to secure the Bonds or any contract securing the Bonds or any arrangement providing for compensating or minimum balances to be maintained by the Issuer with any registered owner of the Bonds.

(h) (1) On each Valuation Date, the Issuer shall value the Nonpurpose Investments allocable to the Bonds thereunder. Nonpurpose Investments cease to be allocated to the Bonds to the extent such Nonpurpose Investments have been expended for the governmental purpose of the issue, or to the extent the value thereof exceeds the value permitted to be allocated to the Bonds under the Universal Cap. To the extent Nonpurpose Investments cease to be allocated to an issue and the value of the Universal Cap exceeds the value of the remaining Nonpurpose Investments allocated to such issue, other Nonpurpose Investments may become allocated to the issue, provided that such Nonpurpose Investments are not already properly allocated to another issue and provided that such allocation does not cause the value of the Nonpurpose Investments allocated to the Bonds to exceed the Universal Cap.

(2) Notwithstanding anything herein to the contrary, the failure to perform the determination of Nonpurpose Investments allocable to the Bonds as of a Valuation Date shall not be considered a violation of this provision if the value of Nonpurpose Investments allocated to the Bonds did not exceed the value of the Bonds outstanding on such date.

(i) The Issuer hereby covenants that it will make no investment or other use of the proceeds of the Bonds that would cause the Bonds to be "arbitrage bonds," as that term is defined in Section 148 of the Code and any rulings and regulations which have been promulgated under the predecessor provisions of the 1954 Code or which may be promulgated under the Code.

(j) The Issuer covenants that they will not enter into any contracts or agreements with the United States or any agency or instrumentality thereof that would cause the representations set forth in the preceding paragraph to be false.

(k) The Issuer will take all further actions necessary to comply with the Code and Regulations.

(l) The Issuer will not enter into any Prohibited Payment Transaction. Prior to directing that any of the Gross Proceeds of the Bonds be invested in certificates of deposit or pursuant to an investment contract, the Issuer will obtain certifications as necessary to provide evidence of compliance with this provision.

(1) The investment of Bond proceeds in a certificate of deposit issued by a commercial bank will not be a Prohibited Payment Transaction if the price at which it is purchased or sold is the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit. If there is no active secondary market in such certificates of deposit, the purchase or sale of a certificate of deposit will not result in a Prohibited Payment Transaction if the certificate of deposit has a Yield (1) as high or higher than the Yield on comparable obligations traded on an active secondary market, as certified by a dealer who maintains such a market, and (2) as high or higher than the Yield available on comparable obligations offered by the United States Treasury. The certification described in the preceding sentence must be executed by a dealer who maintains an active secondary market in comparable certificates of deposit and must be based on actual trades adjusted to reflect the size and term of that certificate of deposit and the stability and reputation of the person issuing the certificate of deposit.

(2) The purchase or sale of Nonpurpose Investments pursuant to an investment contract (e.g., an agreement to deposit gross proceeds with a particular bank, with the deposits to bear interest at an agreed rate) will not be a Prohibited Payment Transaction if (1) at least three bids on the investment contract from persons other than those with an interest in the issue (e.g., underwriters) are received, (2) a certification is provided by the person whose bid is accepted stating that, based on that person's reasonable expectations on the date that the contract is entered into, Nonpurpose Investments will not be purchased pursuant to the investment contract at a price in excess of their Fair Market Value or sold pursuant to the investment contract at a price less than their Fair Market Value, (3) the Yield on the investment contract is at least equal to the Yield offered under the highest bid received from a noninterested party, and (4) the Yield on the investment contract is at least equal to the Yield offered on similar obligations under similar investment contracts (e.g., the Yield on investment contracts entered into by issuers of qualified mortgage bonds).

(m) Arbitrage Compliance. The Issuer acknowledges that the continued exclusion of interest on the Bonds from gross income of the recipients thereof for purposes of federal income taxation depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code, including the rebate requirement described in Section 5. The Issuer hereby agrees and covenants that it shall not permit at any time or times any of the proceeds of the Bonds to be "arbitrage bonds" for purposes of Section 148 of the Code. The Issuer further agrees and covenants that it shall do and perform all acts and things necessary to ensure that the requirements of Section 148 of the Code are met. At the written direction of the Issuer, the Trustee shall make the required transfers and dispositions described in Section 5 hereof.

SECTION 5. ADDITIONAL ARBITRAGE MATTERS.

(a) Issuance Costs, Underwriter's Discount and Bond Insurance Premium. Sale Proceeds in the amount of $723,747.00 will be withheld by the Underwriter from the Issue Price otherwise paid to the Issuer to purchase the Issue as compensation for its services in connection with the sale of the Issue to the public. Sale Proceeds in the amount of $216,042.40 deposited in the Costs of Issuance Fund will be used to pay other Issuance Costs (i.e., other than the Underwriter's discount and Bond Issuance Premium). Any Investment Proceeds thereon will be deposited in the Bond Proceeds Fund and used to pay costs of the Project. All Sale Proceeds used to pay Issuance Costs will be so used within 13 months from the Issuance Date, such period being the Temporary Period for such Sale Proceeds. $681,859.02 of the Sale Proceeds will be used on the date hereof to pay the premium for the Bond Insurance.

(b) Refunding of the Refunded Bonds. Sale Proceeds of the 2004 B Bonds in the amount of $10,178,678.23 will be used on the Issuance Date to purchase a pro rata portion of the Government Obligations, as defined in the Escrow Agreement and identified on Appendix A-1 to the Escrow Agreement (the "Securities").

(1) The total purchase price of the SLG Securities of $10,178,678.00 is treated as the fair market value of the Securities.

(2) The amounts received from the Securities will be used to pay Debt Service on the Refunded Bonds to and including their earliest redemption date (April 1, 2006) and to redeem a portion of the Refunded Bonds on such date. At no time from and after the Issuance Date will the Proceeds in the Escrow Fund be used to acquire or hold Higher Yielding Investments with respect to the Issue.

(3) The Bonds are a Fixed Yield Issue. For purposes of the rebate calculations as set out in Section 6 hereof, the actual interest rates paid on the Bonds shall be used.

(4) The refunding of the Refunded Bonds constitutes an Advance Refunding of a portion of the Prior Bonds.

(c) Payment of Project Costs.

(1) Sale Proceeds of the Bonds in the amount of $161,478,453.75 (which includes an amount of $3,918.45 of Additional Proceeds which will be added to the Bond Proceeds Fund) deposited in the Bond Proceeds Fund will be used to pay the costs of the capital improvements. Such Sale Proceeds may be used to acquire or hold Higher Yielding Investments with respect to the Issue for a period ending on the third anniversary of the Issuance Date (such period being the Temporary Period for such amount), since the following three tests are reasonably expected to be satisfied:

(i) At least 85% of the Sale Proceeds of the Bond Proceeds Fund will be allocated to expenditures as to the Project by the end of the Temporary Period for such Sale Proceeds;

(ii) Within 6 months of the Issuance Date, the Borrower will incur a substantial binding obligation to a third party to expend at least 5% of the Sale Proceeds of the Bond Proceeds Fund on the Project; and

(iii) Completion of the capital improvements and the allocation of the Sale Proceeds of the Bond Proceeds Fund to expenditures with respect to the Project will proceed with due diligence.

Any Sale Proceeds that remain unspent at the end of the Temporary Period will not be invested thereafter in Higher Yielding Investments with respect to the Issue except as part of the Minor Portion. In complying with the foregoing sentence, the Issuer may take into account "yield reduction payments" (within the meaning of Regulations § 1.148-5(c)) timely paid to the United States.

(2) A Reimbursement Allocation will be made on this date in the financial records of the Issuer kept with respect to the Issue showing that $_____ of the Sale Proceeds of the Bonds have been returned to the respective funds or accounts of the Borrower from which such amount was originally and temporarily advanced to finance Capital Expenditures paid before this date. This date is not more than (A) 18 months after the later of the date each of such Capital Expenditures was paid or the date on which the property resulting from each of such Capital Expenditures and comprising part of the Project was placed in service or (B) three years after the original expenditures were paid.

(3) The Proceeds deposited in the Bond Proceeds Fund will be invested beginning on August 31, 2004, pending their use to pay costs of the Project, in a manner that will satisfy the safe harbor requirements of Reg. § 1. 148-5(d)(6)(iii).

(e) Investment Proceeds. Any Investment Proceeds in the Escrow Fund or otherwise expected to be used to pay Debt Service on the Refunded Bonds will not be used to any extent to acquire Higher Yielding Investments with respect to the Issue. Any other Investment Proceeds will be used to pay costs of the Project or Costs of Issuance, subject to the limitation in Section 6(c) hereof. Such Investment Proceeds may be invested in Higher Yielding Investments during the Temporary Period or, if longer, one year from the date of receipt, such period being the Temporary Period for such Proceeds.

(f) No Other Replacement Fund or Assured Available Funds. The Issuer has not established and does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay Debt Service. Except for Proceeds of a Refunding Issue, if any, or a Debt Service Reserve Fund, which will only be funded if the Borrower fails to maintain certain financial standards, no other money or Investment Property is or will be pledged as collateral or used for the payment of Debt Service (or for the reimbursement of the Bond Insurer or any others who may provide money to pay that Debt Service), or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the holders of the Issue or the Bond Insurer reasonable assurance of the availability of such money or Investment Property to pay Debt Service.

(g) No Overissuance. The Proceeds are not reasonably expected to exceed the amount needed for the governmental purposes of the Issue as set forth in Section 2(a) and (b) hereof.

(h) Other Uses of Proceeds Negated. Except as stated otherwise in this Certificate, none of the Proceeds will be used:

(1) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Issuer, any other Governmental Unit or the Borrower,

(2) to replace any Proceeds of another issue that were not expended on the project for which such other issue was issued,

(3) to replace any money that was or will be used directly or indirectly to acquire Higher Yielding Investments,

(4) to make a loan to any person or other Governmental Unit,

(5) to pay any Working Capital Expenditures other than expenditures identified in Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., Issuance Costs, Qualified Administrative Costs, reasonable charges for a Qualified Guarantee or for a Qualified Hedge, interest on the New Money Portion of the Issue for a period commencing on the Issuance Date and ending on the date that is the later of three years from such Issuance Date or one year after the date on which the Project was or will be placed in service, payments of the Rebate Amount, and costs, other than those already described, that do not exceed 5% of the Sale Proceeds and that are directly related to Capital Expenditures financed or deemed financed by the Issue, principal or interest on an issue paid from unexpected excess Sale Proceeds or Investment Proceeds, and principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a Bona Fide Debt Service Fund), or

(6) to reimburse any expenditures made prior to the Issuance Date except those that qualify as a Reimbursement of Prior Capital Expenditures.

No portion of the Issue is being issued solely for the purpose of investing Proceeds in Higher Yielding Investments.

(i) Disposition of Financed or Refinanced Property. The Issuer does not intend to sell or otherwise dispose of, or cause the Borrower to sell or otherwise dispose of, the Project or any portion thereof during the term of the Issue except for dispositions of property in the normal course at the end of such property's useful life to the Borrower.

(j) Minor Portion. The Minor Portion with respect to the Issue is up to $100,000.00. Such Minor Portion, if any, may be invested in Higher Yielding Investments with respect to the Issue.

SECTION 6. REBATE REQUIREMENT, CALCULATIONS AND PAYMENT. Section 148(f) of the Code requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such investments had the amount so invested been invested at a rate equal to the Bond Yield, together with any income attributable to such excess. Except as provided below, the Debt Service Reserve Funds, the Costs of Issuance Funds and the Bond Proceeds Funds and all other funds or accounts treated as containing Gross Proceeds of a series of the Bonds are subject to this requirement.

(a) Rebate Fund. In accordance with the requirements set out in the Code and pursuant to the Indentures relating to the Bonds, the Issuer has created a Rebate Fund pursuant to each such Indenture to be held by the Trustee, in its capacity as Trustee under the Indenture and used as provided in Section 5.06 of the applicable Indenture. On or before 30 days following each Computation Date, upon the Issuer's written direction, an amount shall be deposited to the Rebate Fund by the Trustee from the source or sources stated in such direction so that the balance held in the Rebate Fund shall equal the aggregate Rebate Amount due with respect to the the Bonds as of the Rebate Payment Date following such Computation Date.

(b) Investments. To meet the rebate requirement of Section 148(f) of the Code, the Issuer (or the Rebate Analyst), agrees and covenants to take the following actions:

(1) For each investment of amounts held with respect to the Bonds in the applicable (A) Bond Proceeds Fund, (B) the Escrow Fund, and (C) Rebate Fund, the Trustee, in accordance with the Indenture, or the Issuer as the case may be, shall record the purchase date of such investment, its purchase price, accrued interest due on its purchase date, its face amount, its coupon rate, the frequency of its interest payment, its disposition price, accrued interest due on its disposition date and its disposition date.

(2) The Bond Yield for the Bonds shall be computed as of each Computation Date.

(3) The Rebate Amount for the Bonds shall be calculated as of each Computation Date.

(4) If the Rebate Amount exceeds the amount on deposit in the Rebate Fund, the Issuer shall either (i) direct that amounts be transferred from any surplus available in any other Fund or (ii) immediately pay such amount to the Trustee for deposit into the Rebate Fund.

(5) All calculations of Yield, Future Value, Rebate Amount and present value shall be made through the use of the conventions described in Section 1.148-6 of the Regulations.

(c) Payment to United States of America. Within 60 days after each Computation Date, the Issuer shall pay to the United States 90% of the Rebate Amount. The Issuer shall pay to the United States, not later than 60 days after the Final Computation Date, 100% of the Rebate Amount. Each payment to the United States pursuant to this Section 5(c)

shall be rounded down to the nearest multiple of $100.00. Any amount that is less than $100.00 shall be rounded to zero.

(1) Each payment of an installment shall be mailed to the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by (i) a copy of IRS Form 8038-T, (ii) the CUSIP number for the bond with the latest maturity and (iii) a statement summarizing the determination of the Rebate Amount.

(2) If on the Rebate Payment Date the balance on deposit in the Rebate Fund for the Bonds is in excess of the Rebate Amount attributable to the Bonds, such excess may be transferred pursuant to the provisions of the Indenture. The Issuer may direct that any overpayment of rebate may be recovered from any rebate payment previously made to the United States under any procedure that may, after the date of this Tax Certificate, be permitted by the Code or the Regulations.

(d) Recordkeeping. In connection with the rebate requirement, the Issuer shall maintain the following records:

(1) The Issuer shall record all amounts paid to the United States pursuant to Section 6 hereof. The Issuer shall furnish to the Trustee copies of any materials filed with the IRS pertaining thereto. The Issuer shall provide the Rebate Analyst may request relating to the calculation of any Rebate Amount.

(2) The Issuer shall retain records of the rebate calculations until six years after the Final Computation Date.

(3) The Issuer shall keep and record the data described in Section 5(b) hereof pertaining to the investment of the proceeds of the Bonds.

(e) Rebate Analyst. A Rebate Analyst may be appointed to perform the rebate calculations, as required herein. The Rebate Analyst and each successor Rebate Analyst shall signify its acceptance of the duties imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer under which such Rebate Analyst will agree to discharge its duties pursuant to this Tax Certificate in a manner consistent with prudent industry practice.

(1) The Trustee and the Issuer may rely conclusively upon and shall be full protected from all liability in relying upon the opinions, calculations, determinations, directions and advice of the Rebate Analyst. The charges and fees for such Rebate Analyst shall be paid by the Issuer upon presentation of an invoice for services rendered in connection therewith.

(f) Rebate Exceptions. Attached and labeled as Appendix II are exceptions to the rebate requirements under the Code and Regulations.

SECTION 7. NO PRIVATE USE. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or

indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of any series of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Treasury Regulations promulgated or to be promulgated thereunder.

SECTION 8. OTHER PROVISIONS.

(a) No Federal Guaranty. The Bonds are not, and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

(b) Rebate. The Issuer will rebate to the United States the amount, if any, required by the Code and take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all interest, penalties and other amounts from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take all other actions required of it in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(c) No Artifice or Device. The Issuer has not entered or will not enter into any transaction to reduce the Yield on an investment of the Gross Proceeds of the Bonds so as to cause the amount to be rebated to the United States Treasury to be less than it would have been had the transaction been at arm's length and the Yield on the Bonds not been relevant to either party to the transaction, and that all investments of Gross Proceeds will be made on an arm's length, Fair Market Value basis.

(d) Replacement Proceeds. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of the Issuer or other related governmental agency that have been used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher than the Yield on the Bonds.

(e) No Prohibited Pledged Funds. In connection with this Bonds, there has not been created or established, and the Issuer does not expect that there will be created or established, any sinking fund, pledged fund or similar fund (other than as specifically identified in this Tax Certificate), including without limitation any arrangement under which money, securities, or obligations are pledged directly or indirectly to secure the Bonds or any contract securing the Bonds or any arrangement providing for compensating or minimum balances to be maintained by the Issuer or related governmental agencies with any registered owner of the Bonds.

(f) No Prohibited Transaction. The Bonds are not and will not be part of a transaction or series of transactions that (i) attempt to circumvent the provisions of Section 148 of the Code, or any successor thereto, and the Regulations promulgated thereunder which enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations

in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

(g) No Combined Issue. No other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of financing and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as the Bonds or which will be paid directly or indirectly from proceeds of the sale of the Bonds.

(h) No Abusive Transaction. The issuance of the Bonds will not involve the use of a "device" or an "abusive transaction" within the meaning of Section 149(d)(4) of the Code and the Regulations thereunder.

(i) No Hedge Bonds. Not more than 50% of the proceeds of any series of the Bonds shall be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or longer.

(j) Fixed Yield. The Bonds are a fixed yield issue. No interest or other amount payable on any of the Bonds (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

(k) Continued Compliance. The Issuer covenants to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that the interest thereon be and continue to be excludable from gross income for federal income tax purposes.

(l) Reliance. Under section 1.148-2(b) of the Regulations, an officer of the Issuer must certify the Issuer's expectations as of the issue date. In accordance therewith, the undersigned Chairman of the Issuer hereby in good faith certify that the representations and covenants set forth in this Tax and Compliance Certificate constitute the reasonable expectations of the Issuer as of the Issue Date. Accordingly, the representations and covenants set forth herein are intended and may be relied upon as the certification described in section 1.148-2(b) of the Regulations and are being delivered as part of the record of proceedings in connection with the issuance of the Bonds.

The certifications and representations made in this Certificate and the Exhibits and Attachments are intended to be relied upon as certifications described in §1.148-2(b) of the Regulations.

(m) Compliance with Code. The Issuer covenants and agrees that it shall at all times do and perform all acts and things necessary and within its reasonable control in order to assure that interest paid on the Bonds shall, for purposes of Federal income taxation, be not included in gross income.

The Issuer acknowledges that the covenants and conditions set forth in this Tax Certificate are based upon the Code as it exists on the date hereof and that the Code may be subsequently interpreted or modified by the Federal government in a manner which is inconsistent with the covenants set forth herein. The Issuer agrees that any such subsequent modification or interpretation of the Code will be deemed a requirement that must be met pursuant to the general tax covenant set forth above.

The Issuer shall not be required to comply with any specific requirement of this Tax Certificate to the extent that, in the opinion of Bond Counsel furnished to the Issuer, compliance with such requirement is not necessary to maintain the tax-exempt status of the Bonds.

SECTION 9. AMENDMENTS. This Tax Certificate has been executed pursuant to Section 6.06 of the Indentures applicable to the Bonds wherein the Issuer has covenanted to comply with the provisions of this Tax Certificate in order to maintain the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation. This Tax Certificate sets forth the information, representations, and procedures necessary in order for Bond Counsel to render its opinions regarding the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation and may be amended or supplemented from time to time to maintain such exclusion only with the approval of Bond Counsel.

Notwithstanding any other provision herein, the covenants and obligations contained herein may be and shall be deemed modified to the extent the Issuer secures an opinion of Bond Counsel that any action required hereunder is no longer required or that some further action is required in order to maintain the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation.

SECTION 10. SUPPLEMENTATION OF THIS CERTIFICATE. The Issuer understands the need to supplement this Tax Certificate periodically to reflect further developments in the Federal income tax laws governing the exclusion from Federal gross income of interest on the Bonds and will, periodically, seek the advice of its Bond Counsel to the propriety of seeking the review of and supplements to this Tax Certificate from Bond Counsel.

THE WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION, as Issuer

Dated: August 31, 2004

By: _____

Title: Chairman

320705

Exhibit A

Initial Issue Price and Underwriter's Certificate

To Tax Compliance Certificate of
State of West Virginia Higher Education Policy Commission
Pertaining to

$85,650,000.00
Revenue Bonds
(University Facilities)
2004 Series A

and

$167,260,000.00
Revenue Bonds
(Higher Education Facilities)
2004 Series B

Citigroup Global Markets Inc. (the "Underwriter"), as lead underwriter for the Bonds identified above (the "Issue"), issued by the State of West Virginia Higher Education Policy Commission (the "Issuer"), based on its knowledge regarding the sale of the 2004 Series A Bonds and 2004 Series B Bonds (the "Issue"), certifies as of this date as follows:

(1) Issue Price -- Section 148. The 2004 A Bonds were privately placed with the Underwriter, and then immediately exchanged for 2004 B Bonds. All of the 2004 B Bonds were offered to the general public in a bona fide public offering at an average price of 103.166% of the principal amount of such Bonds (the "Initial Offering Price" as applicable to the respective maturities, some higher than principal amount (Premium Bonds) and some lower than principal amount (Original Issue Discount Bonds)). The fair market value of the Issue is not in excess of the Initial Offering Price. As of the Sale Date, all of the Bonds were sold (other than to bond houses, brokers and other intermediaries) at their respective Initial Offering Prices. The aggregate Initial Offering Price for the Issue is $173,278,720.40 (the "Issue Price", which amount includes the Net Premium Amount on the Bonds of $6,018,720.40).

(2) Information Return. For purposes of the Information Return required by Section 149(e) of the Code to be filed in connection with the Issue:

- The Initial Offering Price of the Issue is $173,278,720.40.

- The weighted average maturity of the 2004 A Bonds is 18.346 years and the weighted average maturity of the 2004 B Bonds is 17.976 years.

- The Yield on the Issue, calculated as described in the next sentence, for the 2004 A Bonds, is at least 4.621919%, and the Yield on the Issue, calculated as described in the next sentence, for the 2004 B Bonds, is at least 4.621611%. That is the Yield that, when used in computing the present worth of all payments of principal to be paid on the Issue, computed on the basis of a 360 day year and semi-annual compounding, produces an amount equal to the aggregate principal amount of the Issue as stated in paragraph (1), less the premium paid for the Bond Issuance.

- The CUSIP Number assigned to the final maturity of the Issue is 95639RBW8 .

(3) Credit Enhancement. The amount and time of payment of the premium for the Bond Insurance pertaining to all of the obligations of the Issue are stated in the Tax Compliance Certificate. Based on that information and the Underwriter's knowledge and experience and, as to (B) below, based on an estimate by the Underwriter of the Yields at which such obligations would have sold in the absence of the Bond Insurance:

(A) The premium paid for the Bond Insurance does not exceed a reasonable charge for the transfer of credit risk, taking into account charges by credit enhancers in similar transactions with which the Underwriter is familiar.

(B) The present value of the premium paid for the Bond Insurance is less than the present value of the interest reasonably expected to be saved on the Issue as a result of the Bond Insurance, for which purpose present value is computed by using the yield -to-maturity of the Issue (taking into account both the premium paid for the Bond Insurance and all fixed payments to be made under the Swap) as the discount rate.

(C) The Bond Insurance was a vital and necessary factor in the marketing of the Issue to the public.

(4) Underwriter's Compensation. The Underwriter's discount for the Issue is $723,747.00, which will be withheld by the Underwriter from the purchase price otherwise paid to the Issuer as compensation for its services in selling the Issue to the public.

(5) Discount Bonds Subject to Mandatory Early Redemption. No bond of the Issue that is subject to mandatory early redemption has a stated redemption price that exceeds the Initial Offering Price of such bond.

(6) Net Premium Bonds. Some of the Bonds in the Issue have an Initial Offering Price that exceeds its stated redemption price at maturity (Premium Bonds), and some have an Initial Offering Price that is less than its stated redemption price at maturity (Original Issue Discount Bonds). The Bonds have a Net Premium Amount (excess of Premium Bonds over Original Issue Discount Bonds) of $6,018,720.40.

(7) No Stepped Coupon Bonds. No bond of the Issue bears interest at an increasing interest rate.

All capitalized terms not defined in this Certificate have the meaning set forth in the Tax Compliance Certificate or in Appendix I thereto.

The signer is an officer of the Underwriter and duly authorized to execute and deliver this Certificate of the Underwriter. The Underwriter understands that the certifications contained in this Certificate will be relied on by the Issuer and the Borrower in making certain of their representations in the Tax Compliance Certificate and in completing and filing the Information Return for the Issue, and by Spilman Thomas & Battle, PLLC, as Bond Counsel, in rendering certain of its legal opinions in connection with the issuance of the Issue.

Dated: August 31, 2004

CITIGROUP GLOBAL MARKETS INC.

By: _____

Its: Director

Exhibit B

Form 8038-G

(Please refer to Tab No. 3)

Exhibit C

Certifications Related to Escrow Investments

CERTIFICATION OF INVESTMENT PROVIDER

August 31, 2004

Re: $167,260,000 State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B

In connection with the purchase of investments with the proceeds of the above-referenced bonds (the "Bonds"), as the provider of such investments (the "Provider"), I hereby certify that:

1. We are a party with no material financial interest in the Bonds, or, if we have such an interest, have been advised by the State of West Virginia Higher Education Policy Commission (the "Issuer") that it received at least three qualifying bids from parties with no such material financial interest;

2. We responded to the investment solicitation and quoted a yield, if the investment is a guaranteed investment contract, that included consideration of the Issuer's reasonably expected deposit and drawdown schedule for the amounts to be invested;

3. Based on our experience in the field and on all the facts and circumstances, the terms of the bid specifications are commercially reasonable;

4. The administrative costs reasonably expected to be paid to third parties in connection with the investment contract are as follows ___;

5. We did not review any other bids or potential bids before submitting our bid to provide the investments; and

6. We understand from the terms of the bid solicitation materials that submission of our bid is a representation by us that we did not consult with any other potential provider about our bid, that the bid was determined without regard to any other formal or informal agreement that we had or have with any other person, and that the bid was not submitted solely as a courtesy to the Issuer or any other person for purposes of satisfying the three bid requirement of the Treasury Regulations.

We understand that the information contained and referred to herein may be relied upon by bond counsel in rendering its opinion that interest on the Bonds is included in gross income.

By:_____

Title:_____

APPENDIX I
Definitions

"Bona Fide Debt Service Reserve Fund" shall mean a fund which may include proceeds of an issue, that:

(a) Is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and

(b) Is depleted at least once each Bond Year, except for reasonable carryover amount not to exceed the greater of:

(i) the earnings on the fund for the immediately preceding Bond Year; or

(ii) one-twelfth (1/12th) of the principal and interest payments on the issue for the immediately preceding Bond Year.

"Bond Counsel" shall mean Spilman Thomas & Battle, PLLC or any other law firm appointed by the issuer, having a national reputation in the field of municipal finance whose opinions are generally accepted by purchasers of municipal bonds.

"Bond Year" shall mean each one year period that ends on the day selected by the issuer. If no day is selected by the issuer before the date that is five years from the Delivery Date, each Bond Year ends on the anniversary of the Delivery Date and on the final maturity date.

"Bond Yield" shall mean the discount rate that, when used in computing the present value on the Delivery Date of all the expected issue payments of principal and interest that are paid and to be paid on the Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Bonds on the Delivery Date. The Bond Yield of the 2004 A Bonds, calculated in accordance with the provisions of Section 148-4 of the Regulations, is 4.621919%. The Bond Yield of the 2004 B Bonds, calculated in accordance with the provisions of Section 1.148-4 of the Regulations, is 4.621611%.

"Bonds" shall mean the Issuer's $85,650,000.00 State of West Virginia Higher Education Policy Commission Revenue Bonds (University Facilities) 2004 Series A Bonds (the "**2004 A Bonds**"), and its $167,260,000.00 State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B (the **"2004 Series B Bonds"**).

"Closing Date" or **"Date of Issue"** shall mean August 31, 2004, the date of this Tax Certificate, which is the date of initial delivery of the Bonds and receipt of payment therefor.

"Code" shall mean the Internal Revenue Code of 1986, and the Regulations promulgated thereto, as amended from time to time.

"Computation Date" shall mean each date on which the Rebate Amount for the Bonds is required to be computed under Section 1.148-3(e) of the Regulations.

"Computation Date Credit" shall mean with respect to an issue a credit of $1,000 against the rebatable arbitrage on (i) the last day of each Bond Year during which there are amounts allocated to Gross Proceeds of an issue subject to the Rebate Requirement; and (ii) the final maturity date for an issue.

"Computation Period" shall mean the period between Computation Dates. The first Computation Period begins on the date hereof and ends on the first Computation Date. Each succeeding Computation Period begins on the date immediately following the Computation Date and ends on the next Computation Date.

"Costs of Issuance" or **"Issuance Costs"** means any financial, legal, administrative and other fees or costs incurred in connection with the issuance of an issue, including any underwriter's compensation withheld from the Issue Price, within the meaning of section 147(g) of the Code and Regulations §1.150-1(b).

"De Minimis Amount" means the same as in Regulation §1.148-1(b), which is:

(1) In reference to original issue discount (as defined in Code §1273(a)(1))or premium on an obligation;

(i) An amount that does not exceed 2 percent multiplied by the stated redemption price at maturity; plus

(ii) Any premium that is attributable exclusively to reasonable underwriter's compensation; and

(2) In reference to market discount (as defined in Code §1278(a)(2)(A) or premium on an obligation, an amount that does not exceed 2 percent multiplied by the stated redemption price at maturity.

"Discharged" shall mean with respect to any Bond, the date on which all amounts due with respect to such Bond are actually and unconditionally due if cash is available at the place of payment and no interest accrues with respect to the Bond after such date.

"Fair Market Value" means

(a) In general. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction. Fair market value generally is determined on the date on which a contract to

purchase or sell the nonpurpose investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this paragraph, an investment that is not of a type traded on an established securities market, within the meaning of section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(b) Safe harbor for establishing fair market value for certificates of deposit. This paragraph (b) applies to a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal. The purchase price of such a certificate of deposit is treated as its fair market value on the purchase date if the yield on the certificate of deposit is not less than -

(A) The yield on reasonably comparable direct obligations of the United States; and

(B) The highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(c) Safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow. The purchase price of a guaranteed investment contract and the purchase price of an investment purchased for a yield restricted defeasance escrow will be treated as the fair market value of the investment on the purchase date if all of the following requirements are satisfied:

(A) The Issuer makes a bona fide solicitation for the purchase of the investment. A bona fide solicitation is a solicitation that satisfies all of the following requirements:

(1) The bid specifications are in writing and are timely forwarded to potential providers.

(2) The bid specifications include all material terms of the bid. A term is material if it may directly or indirectly affect the yield or the cost of the investment.

(3) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the Issuer or any other person for purposes of satisfying the requirements of paragraph (c)(B)(1) or (2) of this section.

(4) The terms of the bid specifications are commercially reasonable. A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment. For example, for solicitations of investments for a yield restricted defeasance escrow, the hold firm period must be no longer than the Issuer reasonably requires.

(5) For purchases of guaranteed investment contracts only, the terms of the solicitation take into account the Issuer's reasonably expected deposit and draw-down schedule for the amounts to be invested.

(6) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.

(7) At least three reasonably competitive providers are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.

(B) The bids received by the Issuer meet all of the following requirements:

(1) The Issuer receives at least three bids from providers that the Issuer solicited under a bona fide solicitation meeting the requirements of paragraph (c)(A) of this section and that do not have a material financial interest in the issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue. In addition, any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue. A provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(2) At least one of the three bids described in paragraph (c)(B)(1) of this section is from a reasonably competitive provider, within the meaning of paragraph (c)(A)(7) of this section.

(3) If the Issuer uses an agent to conduct the bidding process, the agent did not provide the investment.

(C) The winning bid meets the following requirements:

(1) Guaranteed investment contracts. If the investment is a guaranteed investment contract, the winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(2) Other investments. If the investment is not a guaranteed investment contract, the following requirements are met:

(i) The winning bid is the lowest cost bona fide bid (including any broker's fees). The lowest cost bid is either the lowest cost bid for the portfolio or, if the Issuer compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the Issuer from a provider at the time a guaranteed investment contract is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements of this paragraph (c) is taken into account in determining the lowest cost bid.

(ii) The lowest cost bona fide bid (including any broker's fees) is not greater than the cost of the most efficient portfolio comprised exclusively of State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt. The cost of the most efficient portfolio of State and Local Government Series Securities is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications.

(iii) If State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt are not available for purchase on the day that bids are required to be submitted pursuant to terms of the bid specifications because sales of those securities have been suspended, the cost comparison of paragraph (c)(C)(2)(ii) of this section is not required.

(D) The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the investment.

(E) The Issuer retains the following records with the bond documents until three years after the last outstanding bond is redeemed:

(1) For purchases of guaranteed investment contracts, a copy of the contract, and for purchases of investments other than guaranteed investment contracts, the purchase agreement or confirmation.

(2) The receipt or other record of the amount actually paid by the Issuer for the investments, including a record of any administrative costs paid by the Issuer, and the certification under paragraph (c)(D) of this section.

(3) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(4) The bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose

for the deviation. For example, if the Issuer purchases a portfolio of investments for a yield restricted defeasance escrow and, in order to satisfy the yield restriction requirements of section 148, an investment in the winning bid is replaced with an investment with a lower yield, the Issuer must retain a record of the substitution and how the price of the substitute investment was determined. If the Issuer replaces an investment in the winning bid portfolio with another investment, the purchase price of the new investment is not covered by the safe harbor unless the investment is bid under a bidding procedure meeting the requirements of this paragraph (c).

(5) For purchases of investments other than guaranteed investment contracts, the cost of the most efficient portfolio of State and Local Government Series Securities, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

"Final Computation Date" shall mean the date on which the last Bond is Discharged.

"Fiscal Year" shall mean the fiscal year of the State, which commences on July 1 of each year and ends on June 30 of the subsequent year.

"Fixed Yield Issue" means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

"Future Value" shall mean the future value of a payment or receipt at the end of any period, determined using the economic accrual method, and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the Bonds, using the same compounding interval and financial conventions used to compute that Yield as provided under Section 1.148-3(c) of the Regulations.

"Governmental Unit" shall mean a state, a political subdivision or instrumentality of the foregoing within the meaning of Section 141(b)(6) of the Code.

"Gross Proceeds" shall mean Proceeds and Replacement Proceeds of the Bonds within the meaning of the Regulations.

"Higher Yielding Investment" means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.000001) higher than the Yield on the applicable issue, and (b) for all other purposes of this Certificate, is more than one-eighth of one percentage point (.00125) higher than the Yield on the applicable issue.

"Initial Offering Price" shall mean the price at which the Bonds of the issue were offered to the general public in a bona fide public offering.

"Installment Computation Date" shall mean the last day of the first Bond Year and each succeeding Bond Year, until and excluding the Final Computation Date.

"Investment" shall mean any security, obligation, annuity contract, or investment type property as defined in section 148(b) of the Code.

"Investment Proceeds" shall mean any amounts actually or constructively received from investing Proceeds of an issue of bonds.

"Investment Property" shall mean any security or obligation within the meaning of Section 148(b)(2) of the Code, any annuity contract, any interest in any residential rental property for family units which is not located within the jurisdiction of the issuer, any "specified private activity bond" within the meaning of Section 57(a)(5)(C), and any other Investment-Type Property.

"Investment-Type Property" includes any property that is held principally as a passive vehicle for the production of income. A prepayment for property or services is Investment-Type Property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment is not Investment-Type Property if (i) the prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment; and (ii) prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

"IRS" shall mean the Internal Revenue Service.

"Issue Price" means in the circumstances applicable to the issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the Certificate of the Underwriter attached to the Tax Compliance Certificate, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and original issue premium or discount), which is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the Certificate of the Underwriter attached to the Tax Compliance Certificate, which is not more than the fair market value thereof as of

the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity was sold to the public.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices, including any Pre-Issuance Accrued Interest and original issue premium, paid to the Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries).

"Minor Portion" shall mean an amount not exceeding $100,000.

"Net Sale Proceeds" shall mean Sale Proceeds less the amount of those proceeds invested in a reasonably required reserve or replacement fund under section 148(d) of the Code and as part of a minor portion under section 148(e) of the Code.

"Nonpurpose Investment" shall mean any Investment that is not acquired to carry out the governmental purpose of an issue.

"Payment" shall mean a payment as defined in section 1.148-3(d) of the Regulations for purposes of computing the rebate amount, and a payment as defined in section 1.148-5(b) of the Regulations for purposes of computing the yield on an investment.

"Pre-Issuance Accrued Interest" means interest on an obligation that accrued for a period not greater than one year before the Date of Issue and that will be paid within one year after such Date of Issue.

"Present Value" shall mean the amount determined by using the following formula:

$$PV = \frac{FV}{(I+i)n}$$

where i equals the discount rate divided by the number of compounding intervals in a year and n equals the sum of (i) the number of whole compounding intervals for the period ending on the date as of which the Future Value is determined and (ii) a fraction the numerator of which is the length of any short compounding interval during such period and the denominator of which is the length of a whole compounding interval.

"Present Value of an Investment" shall mean the value of an investment computed under the economic accrual method; using the same compounding interval and financial conventions used to compute the yield on the Bonds. On any valuation date, the Present Value of an Investment is equal to the Present Value of all unconditionally payable receipts to be received from the payments to be paid for the investment after that date, using the Yield on the Investment as the discount rate.

"Private Person" shall mean any person or entity other than a Governmental Unit or a Qualifying Section 501(c)(3) Organization.

"Proceeds" shall mean Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue of bonds. Proceeds do not include amounts that are actually or constructively received with respect to an investment that is acquired for the governmental purpose of an issue that are properly allocable to the immaterially higher yield under section 1.148-2(d) of the Regulations or section 143(g) of the Code or to qualified administrative cost recoverable under section 1.148-5(e).

"Prohibited Payment Transaction" shall mean either (i) any transaction to reduce the yield on the investment of Gross Proceeds of the Bonds in such a manner that the amount to be rebated to the federal government pursuant to Section 4 hereof is less than it would have been had the transaction been at arm's length and had the yield on the issue not been relevant to either party or (ii) any transaction described in the Regulations as giving rise to imputed receipts as defined in the Regulations.

"Purchaser" shall mean Citigroup Global Markets, Inc., as the original purchasers of the Bonds from the Issuer.

"Purpose Investment" shall mean any investment that is acquired with the Gross Proceeds of an issue of obligations to carry out the governmental purpose for which such issue was issued.

"Qualified Guarantee" shall mean a qualified guarantee as defined in Section 1.148-4(f) of the Regulations.

"Qualified Guarantee Payment" shall mean a payment made to secure a Qualified Guarantee. For this purpose:

(a) Reasonable Payment. A payment is a Qualified Guarantee Payment only if it does not exceed a reasonable charge for the transfer of credit risk, the determination of which shall be made by taking into account payments charged by guarantors in comparable transactions, including transactions in which the guarantor has no involvement other than as a guarantor. Notwithstanding the preceding sentence, this requirement will not be considered met unless the Present Value of the payments made to secure a Qualified Guarantee for the Bonds (using the Yield on the Bonds to be secured (with regard to payments for the guarantee) as the discount rate) is less than the Present Value of the interest to be saved (using the same discount rate) as a result of the guarantee.

(b) Disallowance Due to Non-Guarantee Element. No payment shall be considered a Qualified Guarantee Payment if any portion thereof is made in respect to a cost, risk or other element that is not customarily borne by guarantors of debt, the interest on which is exempt from federal income taxation, or if the guarantor to which such a payment is made provides non-guarantee services, the fees for which are not separately stated and separately paid.

(c) Allocation of Payments. In the calculation of Yield, Qualified Guarantee Payments shall be taken into account on the basis of level payments which are allocated to the Bonds to which each level payment properly relates.

(i) Level Payments. A Qualified Guarantee Payment is a level payment if: the payment is one of a series of payments with respect to the Bonds; each payment in the series is the same percentage of the sum of the outstanding principal amount of the Bonds and not more than one year's accrued interest (determined as of the date on which the payment is calculated); each payment of the series is due no earlier than one year before and no later than one year after the date on which the payment is calculated; the series of payments are due at periodic intervals (properly adjusted to take into account any short interval); and at least one payment in the series is due in each Bond Year for which the guarantee of the Bonds is in effect. Solely for purposes of the preceding sentence, the first Bond Year shall be treated as beginning on the first day that a guarantee is in effect; the last Bond Year shall be treated as ending on the last day on which the guarantee is in effect (without regard to any retirement of the Bonds before their final maturity date); and any Bond Year that is less than twelve (12) full months shall be treated as a short Bond Year.

(ii) Non-Level Payments. Qualified Guarantee Payments which are not level shall be allocated to the Bonds in a manner that reflects the proportionate credit risk for which the guarantor is compensated. The proportionate credit risk for identical Bonds, including Bonds subject to mandatory early redemption, is the same. The proportionate credit risk with respect to Bonds that are not identical shall be determined by reference to the proportionate interest reduction resulting from the guarantee (determined on a Present Value basis and with adjustments, as necessary, to take into account any level payments). In the case of Bonds that are not readily remarketable without a guarantee and for which the proportionate interest reduction cannot reasonably be estimated, the proportionate credit risk shall be determined by use of a reasonable method that properly reflects such risk.

"Rebate Amount" shall mean 100% of the amount owed to the United States under Section 148(f)(2) of the Code, as further described in Section 1.148-3 of the Regulations.

"Rebate Analyst" shall mean the firm of certified public accountants, or other specialist in the calculation of arbitrage rebate chosen as specified herein to determine the Rebate Amount, if any.

"Rebate Payment Date" shall mean the date following a Computation Date on which the Rebate Amount is mailed or otherwise filed with the IRS. The Rebate Payment Date cannot be a date which is more than 60 days after a Computation Date.

"Rebate Requirement" shall have the meaning ascribed thereto in Section 5 of the Tax Certificate.

"Rebate Yield" shall mean the yield on the Bonds for purposes of determining the Rebate Amount, computed as described in Section 4 hereof.

"Receipt" shall mean a receipt as defined in section 1.148-3(d) of the Regulations for purposes of computing the Rebate Amount, and a receipt as defined in section 1.148-5(b) for purposes of computing Yield on an Investment.

"Regulation" or "Regulations" shall mean the temporary, proposed or final Income Tax Regulations promulgated by the Department of the Treasury that are applicable to the Bonds.

"Related Person" shall mean any person related to any beneficiary of the Bonds within the meaning of Section 144(a)(3) of the Code.

"Replacement Proceeds" shall mean amounts that are treated as replacement proceeds of an issue of bonds under section 1.148-1(c) of the Regulations. Generally, amounts are Replacement Proceeds of an issue if the amounts have a sufficiently direct nexus to the governmental purpose of the issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the issue were not used or to be used for that governmental purpose. Replacement Proceeds include, but are not limited to, sinking funds or pledged funds to the extent that those funds are held by or derived from a substantial beneficiary of the issue (which, for this purpose includes the issuer and any related party to the issuer).

"Sale Proceeds" shall mean amounts actually or constructively received from the sale of an issue of bonds (including amounts used to pay underwriter's discount and compensation and accrued interest other than Pre-Issuance Accrued Interest).

"SLG" shall mean a time deposit security issued by the United States Treasury pursuant to the Time Deposit State and Local Government Series Program described in 31 C.R.F. part 344.

"State" shall mean the State of West Virginia.

"Substantial User" shall mean any person who shall be a substantial user of a facility, as defined in Regulation § 1.103-11(b).

"Tax-Exempt Bond" shall mean any tax-exempt bond within the meaning of section 103 of the Code and section 1.150-1 of the Regulations that is not investment property within the meaning of section 148(b)(3) of the Code.

"Tax Certificate" or **"Tax Compliance Certificate"** shall mean this Tax Compliance Certificate of the Issuer as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

"Test-Period Beneficiary" shall mean any person which is the owner or a Principal User of the Facilities at any time during the 3-year period that begins on the later of (i) the date the Facilities are placed in service, or (ii) the Date of Issue.

"Treasury" shall mean the United States Department of Treasury.

"Universal Cap" shall mean the maximum value of Nonpurpose Investments which may be allocated to the Bonds under section 1.148-6 of the Regulations and is determined by reference to the Value of all outstanding Bonds of the issue. For purposes of this determination Nonpurpose Investments include cash, Tax-Exempt Bonds (i.e., any tax-exempt bond that is not investment property under section 148(b)(3) of the Code), qualified mortgage loans, and qualified student loans.

"Valuation Date" shall mean the date on which the value of the Universal Cap and the Nonpurpose Investments allocable to the Bonds thereunder must be determined under section 1.148-6 of the Regulations. In general, beginning with the first Bond Year beginning after second year anniversary of the Issue Date, the first day of each Bond Year constitutes a Valuation Date. In addition, the Regulations provide with respect to a refunded issue each date on which proceeds of the refunded issue would become transferred proceeds of the refunding issue, e.g., each date on which principal of the refunded issue is paid with proceeds of the refunding bonds, constitutes a Valuation Date.

"Value of a Bond" shall mean the value of a bond determined under section 1.148-4(e) of the Regulations. Under those Regulations, value generally means:

(a) In the case of a plain par bond (within the meaning of section 1.148-1(b) of the Regulations), its outstanding stated principal amount, plus accrued unpaid interest or in the case of a plain par bond actually redeemed, or that is treated as redeemed, its stated redemption price on the redemption date plus accrued unpaid interest; and

(b) In the case of a bond other than a plain par bond, the value on a date of such a bond is generally its Present Value on that date, using the yield on the issue of which the bonds are a part as the discount factor. In determining the Present Value of a variable rate bond, the initial interest rate on the bond established by the index or other rate setting mechanism is used to determine the interest payments on that bond.

"Value of an Investment" shall mean the value of an investment determined under section 1.148-5(d) of the Regulations. Under those Regulations, value as of any date generally means, for any fixed rate investment (within the meaning of section 1.148-1(b) of the Regulations) or Yield Restricted Investment, Present Value on that date, and for any plain par investment (within the meaning of section 1.148-1(b) of the Regulations), the outstanding stated principal amount, plus accrued unpaid interest, as of that date.

"Yield" shall mean the yield computed under section 1.148-4 of the Regulations for the Bonds, and the yield computed under Section 1.148-5 of the Regulations for an Investment.

"Yield Restricted Investments" shall mean any Investments which either (1) bear a yield that is no greater than the Bond Yield, or (2) are investments in one or more Tax-Exempt Bonds.

APPENDIX II

Exceptions to Rebate

SECTION 1. SPENDING EXCEPTIONS.

The rebate requirements with respect to the Bonds are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the "Spending Exceptions") is satisfied. The Spending Exceptions are each independent exceptions. The Bonds need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Bonds.

Each of the Spending Exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Bonds. These purposes include payment of interest (but not principal) on the Bonds.

SECTION 2. 6-MONTH SPENDING EXCEPTION.

The Bonds will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Bonds are allocated to expenditures for the governmental purposes of the Bonds within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Reserve Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If none of the Bonds is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional 6 months if the unexpended Gross Proceeds of the Bonds at the end of the 6-month period do not exceed the lesser of 5% of the Proceeds of the Bonds or $100,000.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within 6 months do not include amounts in a reasonably required reserve or replacement fund for the Bonds or in a Bona Fide Debt Service Reserve Fund for the Bonds.

SECTION 3. 18-MONTH SPENDING EXCEPTION.

The Bonds are treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

(A) All of the Gross Proceeds of the Bonds (excluding amounts in a reasonably required reserve or replacement fund for the Bonds or in a Bona Fide Debt Service Reserve Fund for the Bonds) are allocated to expenditures for the governmental purposes of the Bonds in accordance with the following schedule, measured from the Issuance Date:

(1) at least 15% within 6 months;

(2) at least 60% within 12 months; and

(3) 100% within 18 months, subject to the Reasonable Retainage exception described below.

(B) The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Reserve Fund for the Bonds, to the extent such Fund is subject to rebate, is timely paid to the United States. And,

(C) The Gross Proceeds of the Bonds qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Bonds within 30 months of the Issuance Date.

For the purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Bonds during the 18-month period are included in Gross Proceeds of the Bonds. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Bonds (or the New Money Portion, as applicable) if any portion of the Bonds (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

SECTION 4. 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

(A) In general. A Construction Issue bond which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a

Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Bonds in accordance with the following schedule, measured from the Issuance Date:

(1) at least 10% within 6 months;

(2) at least 45% within 1 year;

(3) at least 75% within 18 months; and

(4) 100% within 2 years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Reserve Fund or a reasonably required reserve or replacement fund for the Bonds are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Compliance Certificate, earnings on amounts in a reasonably required reserve or replacement fund for the Bonds are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Bonds.

If the Issuer elected in the Tax Compliance Certificate to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Bonds during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or 2 years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Reserve Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Bonds do not fail to satisfy the spending requirement for the fourth spend-down period (i.e., 100% within 2 years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within 3 years of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first 3 spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the 2-year period. For purposes of satisfying the final spend-down requirement, Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Bonds, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

(B) 1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Compliance Certificate for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semi-annual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earning during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (e.g., amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Reserve Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

SECTION 5. SPECIAL DEFINITIONS.

"Available Construction Proceeds" means an amount equal to (a) the sum of (i) the Issue Price of the issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocated to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocated to the Underwriter's discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonable required reserve or replacement fund allocated to the issue. Available Construction Proceeds do not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocated to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the Projects financed by the issue is substantially completed.

"Bifurcated Issue" means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations § 1.148-7(j), has elected in its Tax Compliance Certificate to bifurcate into a Construction Portion and a Nonconstruction Portion.

"Bona Fide Debt Service Reserve Fund" means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more bond or note issues, the portion of that fund properly allocable to an issue) or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding

Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

"Construction Issue" means an issue at least 75 percent of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property which is or is to be owned by a Governmental Unit or a 501(c)(3) Organization. If an election has been made in the Issuer's Tax Compliance Certificate to bifurcate an issue or the New Money Portion, the Construction Portion (i.e., that portion of the issue or the New Money Portion which satisfies the 75 percent test stated in the preceding sentence and which finances 100% of the Construction Expenditures) is treated as the Construction Issue and the balance of the issue or the New Money Portion is treated as the Nonconstruction Portion.

"Investment Property" means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a "specified private activity bond" as defined in Section 57(a)(5)(C) but does not include other Tax-Exempt Obligations.

"Reasonable Retainage" means an amount, not to exceed 5% of the Net Sale Proceeds of the Issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the Issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

Form **8038-G** (Rev. November 2000)

Department of the Treasury
Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

Part I Reporting Authority

If Amended Return, check here ▶ ☐

1 Issuer's name
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

2 Issuer's employer identification number
55-0517092

3 Number and street (or P.O. box if mail is not delivered to street address)
1018 KANAWHA BLVD., EAST

Room/suite

4 Report number
3 02

5 City, town, or post office, state, and ZIP code
CHARLESTON WV 25301

6 Date of issue
August 31, 2004

7 Name of issue
State of West Virginia Higher Education Policy Commission (Higher Education Facilities) 2004 Series B

8 CUSIP number
95639RBW8

9 Name and title of officer or legal representative whom the IRS may call for more information
John F. Allevato, Esq.

10 Telephone number of officer or legal representative
304-340-3885

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11	☒ Education	11	173,278,720.40
12	☐ Health and hospital	12	
13	☐ Transportation	13	
14	☐ Public safety	14	
15	☐ Environment (including sewage bonds)	15	
16	☐ Housing	16	
17	☐ Utilities	17	
18	☐ Other. Describe ▶	18	
19	If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐		
20	If obligations are in the form of a lease or installment sale, check box ▶ ☐		

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Part III Description of Obligations. (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	04/01/2034	$ 173,278,720.40	$ 167,260,000.00	17.976 years	4.621611 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest			22	
23	Issue price of entire issue (enter amount from line 21, column (b))			23	173,278,720.40
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	939,789.40		
25	Proceeds used for credit enhancement	25	681,859.02		
26	Proceeds allocated to reasonably required reserve or replacement fund	26			
27	Proceeds used to currently refund prior issues	27	88,011,117.02		
28	Proceeds used to advance refund prior issues	28	10,178,618.00		
29	Total (add lines 24 through 28)			29	99,811,383.44
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	73,467,336.96

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31	Enter the remaining weighted average maturity of the bonds to be currently refunded ▶	18.346 years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded ▶	7.240 years
33	Enter the last date on which the refunded bonds will be called. ▶	April 1, 2006
34	Enter the date(s) the refunded bonds were issued ▶ Current--August 31, 2004; Advance--March 21, 1996	

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	N/A
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	none
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	N/A
b	If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____		
38	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☐		
39	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐		
40	If the issuer has identified a hedge, check box ▶ ☐		

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

J. Michael Mullen — 8/30/2004

Signature of issuer's authorized representative — Date

J. Michael Mullen
Chancellor
Type or print name and title

Attachment to Form 8038-G
for
West Virginia Higher Education Policy Commission (University Facilities) 2004 Series B Bonds
TIN 55-0517092

Date of Issue: August 31, 2004

General Information about Issue:

The 2004 Series A Bonds of the Issuer are being sold in a private placement to the Senior Managing Underwriter of the offering, and are immediately being exchanged for 2004 Series B Bonds of the Issuer (subject of a separate 8038-G filing made contemporaneously with this one), issued at the same time and sold to the public.

The 2004 Series A Bonds will be issued primarily for the purpose of securing the consent of holders of more than fifty percent (50%) of outstanding Bonds of the Issuer to certain amendments to the University System General Resolution provided in the Ninth and Tenth Supplemental Resolutions, and upon issuance the 2004 Series A Bonds will immediately be exchanged for an equal aggregate amount in par value of 2004 Series B Bonds. Upon exchange, the 2004 Series A Bonds will no longer be outstanding.

At no time will the proceeds from the issuance of the 2004 Series A Bonds and the 2004 Series B Bonds exceed in the aggregate the Issue Price of the 2004 Series B Bonds.

Escrow Agreement

among

STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

and

WEST VIRGINIA MUNICIPAL BOND COMMISSION, Escrow Agent

and

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, Paying Agent

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Providing for Refunding of the State of West Virginia University of West Virginia Board of Trustees State University System Revenue Bonds, Series 1996 (Marshall University Library/Information Center)

Dated

as of

August 31, 2004

ESCROW AGREEMENT

among

STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
and

WEST VIRGINIA MUNICIPAL BOND COMMISSION
and

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

THIS SERIES 1996 ESCROW AGREEMENT (the "Escrow Agreement"), dated as of August 31, 2004, is entered into among the State of West Virginia Higher Education Policy Commission, a commission of the State of West Virginia (the "Issuer"), the West Virginia Municipal Bond Commission, an agency of the State of West Virginia (the "Escrow Agent") and J.P. Morgan Trust Company, National Association, successor to Bank One, N.A. (the "Paying Agent" or "Registrar") under the following circumstance (words and terms capitalized are used with meanings given them in Section 1):

RECITALS

A. The Issuer has outstanding its State of West Virginia University of West Virginia Board of Trustees State University System Revenue Bonds, Series 1996 (Marshall University Library/Information Center) (the "Prior Bonds").

B. The Prior Bonds were issued under the Resolution.

C. The Issuer has issued its State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B Bonds (the "2004 Bonds"), one of the purposes of which is refunding a portion of the Prior Bonds.

D. In connection with the refunding, the Issuer now wishes to provide for the payment and redemption of a portion of the Prior Bonds, called the Refunded Bonds.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Escrow Agreement, and in order to secure the payment of the principal, interest and any premium on the Refunded Bonds, the Issuer and the Escrow Agent agree as follows:

Section 1. Definitions. The following terms are defined terms under this Escrow Agreement:

"Bid" means that solicitation for the best bid for investment in the Permitted Securities for the Qualified Defeasance Investments.

"Bond Service Charges" means the principal, interest, and any redemption premium on the Refunded Bonds.

"Closing Date" means the date of delivery of the 2004 Series B Bonds to the Underwriter in exchange for payment of the purchase price

"Defeasance Securities" means the Qualified Defeasance Investments described on Appendix A-1 and any Substitute Securities purchased under Section 4(c).

"Escrow Fund" means the State of West Virginia Higher Education Policy Commission 2003 Series B Revenue Bonds Escrow Fund, established in Section 2 of this Escrow Agreement.

"Qualified Defeasance Investments" means Permitted Investments as defined in the Resolution, and includes Government Obligations and Government Agency Obligations, among other investments.

"Refunded Bonds" means those bonds of the Prior Bonds scheduled to be refunded by the proceeds in this Escrow Fund, as set out in Appendix B-1 hereto.

"Resolution" means that certain General Resolution of the State of West Virginia Board of Trustees of the University of West Virginia (a predecessor Board to the Commission) dated September 9, 1992 (the "General Resolution"), and that certain Third Supplemental Resolution of the State of West Virginia Board of Trustees of the University of West Virginia (a predecessor Board to the Commission) authorizing up to $15,000,000 principal amount of the Trustee's Revenue Bonds, Series 1996 (Marshall University Library/Information Center), adopted February 23, 1996, authorizing the issuance of the Prior Bonds.

"Substitute Securities" means securities purchased and deposited in the Escrow Funds in accordance with Section 4(c), in substitution for securities sold by the Escrow Agent as provided in that Section.

Words and terms not otherwise defined in this Escrow Agreement are used with the meanings given them in the Bond Indenture.

Section 2. Escrow Fund. The Issuer hereby establishes a "State of West Virginia Higher Education Policy Commission 2004 Series B Revenue Bonds Escrow Fund" as a separate deposit account in the custody of the Escrow Agent.

The Escrow Fund, including the earnings on that fund and the investments in that fund will be held in trust for the benefit of the holders of the Refunded Bonds and will be applied to the payment of Bond Service Charges on the Refunded Bonds as provided in Section 5 of this Escrow Agreement.

Section 3. Escrow Funding. The Issuer will pay into, or direct that the following is paid into, the Escrow Fund: (i) from the proceeds of the sale of the 2004 Bonds, the amount of $10,178,618.00; and (ii) from funds of the Issuer, the amount of $0.23.

Section 4. Investment of Escrow Fund. The money in the Escrow Fund must be invested and reinvested by the Escrow Agent in accordance with this Section 4. The Escrow Agent will not surrender or otherwise attempt to redeem or negotiate the investments in the Escrow Fund except as they come due as shown on Appendix A-1 or when they become due on reinvestment as provided in paragraph (b) below, or upon the purchase of Substitute Securities as provided in paragraph (c) below.

The Escrow Agent must use the money initially deposited in the Escrow Fund (except for the sum of $0.23 of such amount which is to remain as uninvested cash) to purchase the Defeasance Securities. The Defeasance Securities to be acquired for the Escrow Fund are described on Appendix A-1. The Escrow Agent must purchase the Defeasance Securities for the Escrow Fund in accordance with the terms of the Bid.

Section 5. Payment of Refunded Bonds. The Escrow Fund, including the investments in the Escrow Fund and the income derived from those investments, must be held by the Escrow Agent and used solely to pay the Bond Service Charges on a portion of the Refunded Bonds. The Escrow Agent shall transfer the required funds to the Paying Agent in a timely manner in order to pay the Bond Service Charges on the Refunded Bonds on October 1, 2004, April 1, 2005, October 1, 2005 and April 1, 2006.

The Issuer authorizes and directs the Registrar to give the notices required by the Resolution at Section 5.05 thereof that the Refunded Bonds are to be redeemed on the dates described on Appendix B-1, and further directs the Registrar to give notice to each owner or partial owner of said Refunded Bonds by mailing a copy of a Notice of Redemption in the form as prescribed in attached Appendix C, by first-class mail, postage prepaid, to such owners' last addresses appearing on the registration books of the Issuer maintained by the Registrar not later than the appropriate dates set out above. At the discretion of the Registrar, notice may also be given by publication in an Authorized Newspaper, as defined in the Resolution and pursuant to the provisions of Section 5.05 of the Resolution, but such publication shall not relieve the duty of the Registrar to mail notices to owners of the Refunded Bonds as set forth herein. The Issuer will pay all costs incurred by the Escrow Agent and Registrar in giving those notices.

Section 6. Defeasance of Refunded Bonds. The Defeasance Securities held in the Escrow Fund are of such maturities or redemption dates and interest payment dates as will be sufficient, together with any cash in the Escrow Fund, without further investment or reinvestment of the principal or interest earnings, for the payment of the Bond Service Charges on the Refunded Bonds on October 1, 2004, April 1, 2005, October 1, 2005 and April 1, 2006.

The purchase of the Defeasance Securities and the Issuer's direction to the Escrow Agent and Paying Agent in Section 5 to give the redemption notice for the Refunded Bonds, meet the requirements of Article VIII of the General Resolution and Article IX of the Third Supplemental Resolution for defeasance of the Refunded Bonds.

Section 7. Money Remaining. Any money in the Escrow Fund after the final remaining payment of all Bond Service Charges on the Refunded Bonds and the payment of all fees and expenses of the Escrow Agent must be paid to the Issuer.

Section 8. Escrow Agent. The Escrow Agent may consult with counsel of its choice with respect to any question relating to its duties and responsibilities hereunder or otherwise in connection herewith, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or not taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

None of the provisions contained in this Escrow Agreement shall require the Escrow Agent to use or advance its own funds in the performance of any of its duties or the exercise of any of its rights or powers hereunder. The Escrow Agent shall not be responsible or liable for the performance or compliance by any party other than the Escrow Agent with the terms or conditions of any such instruments.

The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth in this Escrow Agreement. No implied duties of the Escrow Agent shall be read into this Escrow Agreement.

The Escrow Agent shall be entitled to rely and shall be protected in acting in reliance upon any instructions or directions famished to it in writing or pursuant to the provisions of this Escrow Agreement and shall be entitled to treat as genuine, and as the document it purports to be, any letter, paper or other document famished to it and believed by it to be genuine and to have been signed and presented by the proper party or parties. The Escrow Agent is hereby authorized and empowered to use affiliates or agents to perform any of its duties under this Escrow Agreement.

The Issuer hereby agrees to indemnify and hold the Escrow Agent and its directors, officers, agents and employees (collectively, the "Indemnified Parties") harmless from and against any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket and incidental expenses and legal fees ("Losses") that may be imposed on, incurred by, or asserted against, the Indemnified Parties or any of them for following any instructions or other directions upon which the Escrow Agent is authorized to rely pursuant to the terms of this Escrow Agreement. In addition to and not in limitation of the immediately preceding sentence, the Issuer also agrees to indemnify and hold the Indemnified Parties and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnities or any of them in connection with or arising out of the Escrow Agent's performance under this Escrow Agreement, provided the Indemnified Parties have not acted with gross negligence or engaged in willful misconduct. The foregoing indemnity shall survive the termination of the Escrow Agreement.

Any corporation, association or other entity into which the Escrow Agent may be converted, merged, or with which it may be consolidated, or to which it may sell or otherwise transfer all or substantially all of its corporate trust assets and business or any corporation,

association or other entity resulting from any such conversion, sale, merger, consolidation or other transfer to which it is a party, ipso facto, shall be and become successor escrow agent hereunder, vested with all other matters as was its predecessor, without the execution or filing of any instrument or any further act on the part of the parties hereto, notwithstanding anything herein to the contrary.

Section 9. Fees and Charges of Escrow Agent and Paying Agent. The Issuer shall pay the Escrow Agent and Paying Agent, from time to time, reasonable compensation for all services rendered hereunder, and under the Resolution, and reimburse the Escrow Agent and Paying Agent for all fees and expenses, including reasonable fees and expense of counsel, upon receipt of an invoice from the Escrow Agent and Paying Agent. The Escrow Agent and Paying Agent each acknowledge that the agreement by Issuer to pay its respective fees and charges is satisfactory to it and satisfies any rights it may have to fees and charges under the Prior Indenture and that the Escrow Agent or Paying Agent has no lien or other interest in the Escrow Fund or any money or investments in the Escrow Fund.

Section 10. Dedication of Escrow Fund to Payment of Refunded Bonds. The Issuer dedicates the Escrow Fund to the payment of Bond Service Charges on the Refunded Bonds. The trust and fiduciary relationship created by this Escrow Agreement is irrevocable and is intended for the benefit of the holders of the Refunded Bonds. The dedication and use of the Escrow Funds is valid against all parties having claims of any kind against the Issuer or the Escrow Agent, regardless of the capacity in which the claim arose. No entity or person other than the Escrow Agent has any interest in or ownership of the Escrow Fund. The Escrow Fund must be used solely for the payment of Bond Service Charges on the Refunded Bonds until the final payment of those Bond Service Charges.

Section 11. Amendments. This Escrow Agreement may be amended or modified to cure any ambiguity, inconsistency or formal defect, or to confer upon the Escrow Agent for the benefit of the holders of the Refunded Bonds any additional rights, remedies, powers or security.

No amendment may be made unless the Escrow Agent has received an Opinion of Bond Counsel that the amendment or modification will not cause the interest on the Refunded Bonds or the 2004 Series B Bonds to be included in the gross income of the holders of those bonds.

Section 12. Severability. If any provision of this Escrow Agreement is held to be invalid, illegal or unenforceable, no other provision will be affected by that holding.

Section 13. Successor and Assigns. This Escrow Agreement will inure to the benefit of and be binding on the Issuer, the Escrow Agent, the holders of the Refunded Bonds and the 2004 Series B Bonds, and their successors and assigns.

Section 14. Counterparts. This Escrow Agreement may be signed in several counterparts. Each counterpart will be an original and all counterparts will constitute a single document. The parties may sign separate signature pages. A counterpart will be duly executed if it contains the signature of the parties on one or more signature pages.

Section 15. Termination. This Escrow Agreement will terminate upon the completion of the duties of the Escrow Agent.

Section 16. Governing Law. This Escrow Agreement will be governed by the laws of West Virginia.

The Issuer, the Escrow Agent and the Paying Agent have caused this Escrow Agreement to be signed and delivered by their duly authorized officers, all as of the date set forth above.

STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION, as Issuer

By: _____

Its: Chairman

WEST VIRGINIA MUNICIPAL BOND COMMISSION as Escrow Agent

By: _____

Its: Acting Executive Director

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, as Paying Agent

By: _____

Its: VICE PRESIDENT

Appendix A-1

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES), 2004 SERIES B

DESCRIPTION OF THE ESCROWED SECURITIES
AS OF AUGUST 31, 2004

Type	Settlement Date	Maturity Date	Par Amount	Coupon Rate	Price	Total Cost
SLGS	31-Aug-04	01-Oct-04	$245,460.00	1.330%	100.000000%	$245,460.00
SLGS	31-Aug-04	01-Apr-05	156,607.00	1.730%	100.000000%	156,607.00
SLGS	31-Aug-04	01-Oct-05	158,187.00	1.930%	100.000000%	158,187.00
SLGS	31-Aug-04	01-Apr-06	9,618,364.00	2.160%	100.000000%	9,618,364.00
			$10,178,618.00			$10,178,618.00

Appendix B-1

WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES), 2004 SERIES B

DEBT SERVICE REQUIREMENTS FOR THE REFUNDED BONDS
ASSUMING NO OPTIONAL REDEMPTIONS PRIOR TO MATURITY
AS OF AUGUST 31, 2004

(FOR INFORMATIONAL PURPOSES ONLY)

Payment		Payment For				Total Debt
Date	Rate	Principal	Rate	Principal	Interest	Payment
01-Oct-04					$263,592.50	$263,592.50
01-Apr-05					263,592.50	263,592.50
01-Oct-05					263,592.50	263,592.50
01-Apr-06					263,592.50	263,592.50
01-Oct-06					263,592.50	263,592.50
01-Apr-07	5.200%	$725,000.00			263,592.50	988,592.50
01-Oct-07					244,742.50	244,742.50
01-Apr-08	5.400%	765,000.00			244,742.50	1,009,742.50
01-Oct-08					224,087.50	224,087.50
01-Apr-09	5.500%	805,000.00			224,087.50	1,029,087.50
01-Oct-09					201,950.00	201,950.00
01-Apr-10	5.600%	500,000.00	5.600%	$350,000.00	201,950.00	1,051,950.00
01-Oct-10					178,150.00	178,150.00
01-Apr-11			5.600%	900,000.00	178,150.00	1,078,150.00
01-Oct-11					152,950.00	152,950.00
01-Apr-12			5.750%	950,000.00	152,950.00	1,102,950.00
01-Oct-12					125,637.50	125,637.50
01-Apr-13			5.750%	1,005,000.00	125,637.50	1,130,637.50
01-Oct-13					96,743.75	96,743.75
01-Apr-14			5.750%	1,060,000.00	96,743.75	1,156,743.75
01-Oct-14					66,268.75	66,268.75
01-Apr-15			5.750%	1,120,000.00	66,268.75	1,186,268.75
01-Oct-15					34,068.75	34,068.75
01-Apr-16			5.750%	1,185,000.00	34,068.75	1,219,068.75
		$2,795,000.00		$6,570,000.00	$4,230,752.50	$13,595,752.50

Appendix C

(Form of)

NOTICE OF REDEMPTION TO THE HOLDERS OF

$_____
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
UNIVERSITY SYSTEM BONDS
SERIES 1996

NOTICE IS HEREBY GIVEN pursuant to the applicable provisions of the governing documents of the above captioned Bonds (the "Bonds"), issued by the West Virginia Higher Education Policy Commission (the "Issuer"), on _____, 1996, that the Bonds herein described are called for redemption prior to their maturity and will be redeemed on August 31, 2004, (the "Redemption Date"). On the Redemption Date, the redemption price indicated below will become due and payable. Redemption will be made by payment of the principal amount of each such Bond, together with interest accrued to the Redemption Date plus applicable premium, if any. From and after the Redemption Date, interest on such Bonds shall cease to accrue and any lien or interest in or to any pledge of security or collateral for such Bonds hereby called shall also cease and become null on the Redemption Date.

The following Bonds will be redeemed and paid upon presentation to the office(s) shown below.

CUSIP Number*	Maturity Date (June 1)	Principal Amount to be Refunded	Interest Rate	Price

Payment of said Bonds called for redemption will be made upon presentation and surrender of such Bonds.

Called Bonds should be presented as follows:

Registered or certified insured mail is suggested when submitting called Bonds for payment.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Customer Service is _____.

By: _____
as Trustee

Dated: August 31, 2004

[_____ LOGO]

NOTICE

Withholding of 28% of gross redemption proceeds of any payment made within the United States may be required by the Interest and Dividend Tax Compliance Act of 1983 unless the Paying Agent has the correct taxpayer identification number (social security or employer identification number) or exemption certificate of the payee. Please furnish a properly completed Form W-9 or exemption certificate or equivalent when presenting your securities.

**The Issuer and Trustee shall not be responsible for the use of the CUSIP number(s) selected, nor is any representation made as to their correctness indicated in the notice nor as printed on any Bond. They are included solely for the convenience of the holders.*

R-1

Specimen

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-1

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
6.000%	April 1, 2005	August 31, 2004	95639RAY5

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FIVE MILLION SEVEN HUNDRED TEN THOUSAND DOLLARS ($5,710,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

Date"), until maturity or until the date fixed for redemption if this Bond is called for prior redemption and payment on such date is provided for. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Resolution.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by Municipal Bond Commission, as paying agent (the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (15 days before the interest payment dates of October 1 and April 1) at the address of such Registered Owner as it appears on the registration books of the Commission maintained by J.P. Morgan Trust Company, National Association, as construction trustee, registrar and transfer agent (in such capacity, the "Trust Company"), or, at the option of any Registered Owner of at least $1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Bond for payment at the principal office of the Paying Agent in Charleston, West Virginia.

This Bond is one of an issue of a Series of Bonds in the aggregate principal amount of $167,260,000 (the "Bonds") authorized and issued to provide funds to (i) provide capital improvements at institutions of higher education located throughout the State, (ii) to advance refund certain outstanding bonds in the principal amount of $9,615,000, and (iii) pay the costs associated with the issuance of the 2004 B Bonds, all pursuant to a General Resolution adopted on September 9, 1992, by the University of West Virginia Board of Trustees (the "Board of Trustees") and a General Resolution adopted on September 9, 1992, by the Board of Directors of the State College System (the "Board of Directors"), predecessors to the Commission, as amended by the Eleventh Supplemental Resolution of the Commission adopted April 2, 2004 (the "Eleventh Supplemental Resolution"), the Twelfth Supplemental Resolution of the Commission adopted June 4, 2004 (the "Twelfth Supplemental Resolution"), the First Consolidated Resolution of the Commission adopted June 4, 2004 (the "First Consolidated Resolution"), the Second Consolidated Resolution of the Commission adopted July 29, 2004 (the "Second Consolidated Resolution") and the Third Consolidated Resolution of the Commission adopted August 20, 2004 (the "Third Consolidated Resolution" and together with the General Resolution, the Eleventh Supplemental Resolution, the Twelfth Supplemental Resolution, the First Consolidated Resolution, and the Second Consolidated Resolution, the "Resolution"). The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 18B, Articles 1, 1B, 2, 3 and 10 and Chapter 18, Article 12B, Chapter 13, Article 2G (collectively, the "Act") and Chapter 29, Article 22, Section 18a of the Code of West Virginia, 1931, as amended, (the "Lottery Act").

This Bond is payable solely, equally and ratably from the Revenues (as such term is defined in the Resolution) on a parity in all respects with the Prior Bonds and any Additional Bonds which may hereafter be issued pursuant to the Resolution. Reference is hereby made to the Resolution as the same may be further amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the Commission and the Registered Owners of the Bonds and any subsequently issued Additional Bonds. Certified copies of the Resolution are on file at the office of the Commission in the City of Charleston, West Virginia.

The 2004 B Bonds are special and limited obligations of the Commission, secured ratably by a first lien on Revenues, on a parity as to lien and source of payment with the 1997 University Bonds, the 1997 College Bonds, the 1998 University Bonds, the 2000A University Bonds, the 2000B University Bonds, the 2003 University Bonds and the 2003 College Bonds (collectively, the "Prior Bonds"). This Bond is a special obligation of the Commission, payable together with the Prior Bonds and any Additional Bonds which may hereafter be issued, solely from the sources pledged under the Resolution. The bonds of the series of which this Bond is one, as to both principal and interest, shall not constitute a debt or a pledge of the faith and credit or taxing power of the State of West Virginia or of any county, municipality or any other political subdivision of said State, and the owners hereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of said State for the payment of the principal hereof or interest hereon, but the Bonds, and Prior Bonds together with any Additional Bonds which may subsequently be issued on a parity herewith, shall be payable equally and ratably solely from the sources pledged under the Resolution.

The Bonds of this issue are subject to optional and mandatory redemption prior to their stated maturity dates as set forth in the following lettered paragraphs:

(a) The 2004 B Bonds maturing on or after April 1, 2015 are subject to optional redemption at the option of the Commission, prior to maturity, on and after April 1, 2014, in whole or in part at any time from amounts deposited with the Escrow Agent by the Commission and from other funds available therefore at the a redemption price of par, plus accrued interest to the date fixed for redemption.

(b) The 2004 B Bonds maturing April 1, 2029 and April 1, 2034 shall be subject to mandatory annual sinking fund redemption of principal on April 1, in the years and in the amounts set forth below, without premium, plus interest accrued to the dates of such redemption:

2004 B Bonds due April 1, 2029

Year	Principal Amount
2025	$6,135,000
2026	6,445,000
2027	6,765,000
2028	7,105,000
2029 (Maturity)	7,460,000

2004 B Bonds due April 1, 2034

Year	Principal Amount
2030	$7,835,000
2031	8,225,000

2032	8,635,000
2033	9,070,000
2034 (Maturity)	9,520,000

The principal amount of the Bonds delivered to or purchased by the Paying Agent shall reduce pro tanto the principal amount of such series of Term Bonds to be redeemed on the Mandatory Redemption Date with respect to such maturity next following such delivery or purchase.

In the event of any redemption of less than all outstanding Bonds, the maturities to be redeemed shall be selected by the Registrar at the direction of the Commission, and Bonds to be redeemed shall be selected by lot within a maturity, or in such other manner deemed appropriate by the Registrar. If less than all the Bonds are to be redeemed, the Bonds to be redeemed shall be identified by reference to the Series designation, date of issue, CUSIP numbers and maturity dates. Notice of the call for any redemption, unless waived by the Registered Owner, shall be given by the Registrar, by mailing a redemption notice, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of any Bond or portions of Bonds to be redeemed in whole or in part at the address shown on the registration books of the Commission maintained by the Registrar, for registration and transfer of the Bonds under the Resolution, and as otherwise prescribed in the Resolution, provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Resolution or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Resolution.

Additional Bonds may be issued under the Resolution, and reference is made to the Resolution with respect to the requirements for the issuance of Additional Bonds which shall be equally and ratably secured under the Resolution with the Bonds.

Modifications or amendments of the Resolution may be made to the extent and in the circumstances permitted by the Resolution to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds of this issue, be surrendered to the Trust Company and exchanged for other fully registered bonds, upon the terms set forth in the Resolution. Neither the Commission nor the Trust Company shall be required to register or transfer this Bond or exchange other Bonds for this bond during the period beginning on a Record Date and ending on an Interest Payment Date.

IT IS HEREBY FURTHER CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due form, time and manner as required by law.

All provisions of the Resolution and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN TESTIMONY WHEREOF, the Commission has caused this Bond to be executed by and on its behalf by the manual or facsimile signature of the Governor of the State of West Virginia and the Chancellor of the Commission, and has caused the Great Seal of the State of West Virginia (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced hereon and attested by the manual or facsimile signature of the Secretary of State of the State of West Virginia, and has caused this Bond to be authenticated by the manual signature of an authorized officer of the Trust Company, without which authentication this Bond shall not be valid nor entitled to the benefits of the Resolution, all as of the Bond Date stated above.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: Specimen
Robert E. Wise, Jr., Governor of the State of West Virginia

By: Specimen
J. Michael Mullen, Chancellor

Attest:

By: Specimen
Secretary of State of the State of West Virginia

319443

CERTIFICATE OF AUTHENTICATION:

This Bond is one of the Bonds described in the within-named Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the Date of Authentication set forth below.

Date of Authentication: August 31, 2004.

J. P. Morgan Trust Company, National Association, as Trust Company

By:

Its: Authorized Officer

STATEMENT OF INSURANCE

Financial Guaranty Insurance Company ("Financial Guaranty") has issued a policy containing the following provisions with respect to the Bonds, such policy being on file at the principal office of the Municipal Bond Commission, as paying agent and escrow Agent (the "Paying Agent"):

Financial Guaranty hereby unconditionally and irrevocably agrees to pay for disbursement to the Bondholders that portion of the principal or accreted value (if applicable) of and interest on the Bonds which is then due for payment and which the issuer of the Bonds (the "Issuer") shall have failed to provide. Due for payment means, with respect to principal or accreted value (if applicable), the stated maturity date thereof, or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which the payment of principal or accreted value (if applicable) of the Bonds is due by reason of call for redemption (other than mandatory sinking fund redemption), acceleration or other advancement of maturity, and with respect to interest, the stated date for payment of such interest.

Upon receipt of telephonic or telegraphic notice, subsequently confirmed in writing, or written notice by registered or certified mail, from a Bondholder or the Paying Agent to Financial Guaranty that the required payment of principal, accreted value or interest (as applicable) has not been made by the Issuer to the Paying Agent, Financial Guaranty on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, or its successor as its agent (the "Fiscal Agent"), sufficient to make the portion of such payment not paid by the Issuer. Upon presentation to the Fiscal Agent of evidence satisfactory to it of the Bondholder's right to receive such payment and any appropriate instruments of assignment required to vest all of such Bondholder's right to such payment in Financial Guaranty, the Fiscal Agent will disburse such amount to the Bondholder.

As used herein the term "Bondholder" means the person other than the Issuer or the borrower(s) of bond proceeds who at the time of nonpayment of a Bond is entitled under the terms of such Bond to payment thereof.

The policy is non-cancellable for any reason.

Financial Guaranty Insurance Company

(Form of Assignment)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfer unto

_____

_____

_____(Please print or typewrite name, address and Social Security Number of Transferee)_____the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, as Attorney, to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

In the presence of:

_____

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

R-2

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-2

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2006	August 31, 2004	95639RAZ2

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: TWO MILLION SIX HUNDRED EIGHTY THOUSAND DOLLARS ($2,680,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-3

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-3

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
2.100%	April 1, 2007	August 31, 2004	95639RBA6

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: THREE MILLION FIVE HUNDRED THIRTY-FIVE THOUSAND DOLLARS ($3,535,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-4

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-4

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2008	August 31, 2004	95639RBB4

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: THREE MILLION SIX HUNDRED FIFTEEN THOUSAND DOLLARS ($3,615,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-5

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-5

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
2.800%	April 1, 2009	August 31, 2004	95639RBC2

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: THREE MILLION SEVEN HUNDRED NINETY-FIVE THOUSAND DOLLARS ($3,795,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-6

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
3.000%	April 1, 2010	August 31, 2004	95639RBD0

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: THREE MILLION NINE HUNDRED THOUSAND DOLLARS ($3,900,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-7

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-7

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
3.250%	April 1, 2011	August 31, 2004	95639RBE8

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: ONE MILLION SIX HUNDRED FORTY THOUSAND DOLLARS ($1,640,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-8

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2011	August 31, 2004	95639RBF5

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: TWO MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($2,375,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-9

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-9

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2012	August 31, 2004	95639RBG3

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION ONE HUNDRED NINETY THOUSAND DOLLARS ($4,190,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-10

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-10

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2013	August 31, 2004	95639RBH1

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION FOUR HUNDRED THOUSAND DOLLARS ($4,400,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-11

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-11

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2014	August 31, 2004	95639RBJ7

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION SIX HUNDRED TWENTY THOUSAND DOLLARS ($4,620,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-12

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-12

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2015	August 31, 2004	95639RBK4

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS ($4,850,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-13

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-13

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2016	August 31, 2004	95639RBL2

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FIVE MILLION NINETY THOUSAND DOLLARS ($5,090,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-14

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-14

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2017	August 31, 2004	95639RBM0

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS ($4,155,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-15

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-15

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2018	August 31, 2004	95639RBN8

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS ($4,360,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-16

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2019	August 31, 2004	95639RBP3

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION FIVE HUNDRED EIGHTY THOUSAND DOLLARS ($4,580,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-17

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-17

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2020	August 31, 2004	95639RBQ1

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FOUR MILLION EIGHT HUNDRED TEN THOUSAND DOLLARS ($4,810,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-18

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-18

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2021	August 31, 2004	95639RBR9

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FIVE MILLION FIFTY THOUSAND DOLLARS ($5,050,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-19

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2022	August 31, 2004	95639RBS7

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FIVE MILLION THREE HUNDRED THOUSAND DOLLARS ($5,300,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-20

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-20

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2023	August 31, 2004	95639RBT5

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FIVE MILLION FIVE HUNDRED SIXTY-FIVE THOUSAND DOLLARS ($5,565,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-21

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-21

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2024	August 31, 2004	95639RBU2

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FIVE MILLION EIGHT HUNDRED FORTY-FIVE THOUSAND DOLLARS ($5,845,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

R-22

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-22

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2029	August 31, 2004	95639RBV0

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: THIRTY-THREE MILLION NINE HUNDRED TEN THOUSAND DOLLARS ($33,910,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

No. R-23

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NO.
5.000%	April 1, 2034	August 31, 2004	95639RBW8

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: FORTY-THREE MILLION TWO HUNDRED EIGHTY-FIVE THOUSAND DOLLARS ($43,285,000.00 DOLLARS)

KNOW ALL MEN BY THESE PRESENTS that the HIGHER EDUCATION POLICY COMMISSION (the "Commission"), a commission of the state of West Virginia (the "State"), created and existing under the Constitution and laws of the State, for value received, hereby acknowledges itself obligated to, and promises to pay, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above, the Principal Amount stated above, and to pay interest on the unpaid balance of said Principal Amount from the Interest Payment Date (as described below) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Bond Date stated above, at the Interest Rate per annum stated above, on April 1, 2005, and semiannually thereafter on October 1 and April 1 of each year (each an "Interest Payment

$167,260,000
STATE OF WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION
REVENUE BONDS
(HIGHER EDUCATION FACILITIES) 2004 SERIES B

CERTIFICATE OF DETERMINATION

The undersigned, Mary Clare Eros, Chairman, on behalf of the West Virginia Higher Education Policy Commission (the "Commission"), in accordance with a General Resolution adopted on September 9, 1992, by the University of West Virginia Board of Trustees (the "Board of Trustees") and a General Resolution adopted on September 9, 1992, by the Board of Directors of the State College System (the "Board of Directors"), predecessors to the Commission, as amended and supplemented from time to time including the Eleventh Supplemental Resolution of the Commission adopted April 2, 2004 (the "Eleventh Supplemental Resolution"), the Twelfth Supplemental Resolution of the Commission adopted June 4, 2004 (the "Twelfth Supplemental Resolution"), the First Consolidated Resolution of the Commission adopted June 4, 2004 (the "First Consolidated Resolution"), the Second Consolidated Resolution of the Commission adopted July 29, 2004 (the "Second Consolidated Resolution"), and the Third Consolidated Resolution of the Commission adopted August 20, 2004 (the "Third Consolidated Resolution" and together with the General Resolution, the Eleventh Supplemental Resolution, the Twelfth Supplemental Resolution, the First Consolidated Resolution, and the Second Consolidated Resolution the "Resolution"), with respect to the $167,260,000 State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B (the "2004 B Bonds"), hereby finds and determines as follows:

(i) The 2004 B Bonds shall be issued in the aggregate principal amount of $167,260,000. Such principal amount does not exceed $180,000,000, being the maximum principal amount of such Bonds authorized by the Resolution.

(ii) The 2004 B Bonds shall mature in the amounts and on the dates set forth on Schedule I attached hereto and incorporated herein. Schedule I includes the amounts and maturities of bonds which maturities do not extend beyond April 1, 2035. The Interest Payment Dates on the 2004 B Bonds shall be each October 1 and April 1, commencing April 1, 2005. The Record Date for the 2004 B Bonds shall be the 15th day of the month next preceding an Interest Payment Date.

(iii) The 2004 B Bonds shall bear interest at the rates and produce the yields set forth on Schedule I attached hereto and incorporated herein, which rates do not exceed an average interest cost of 6% per annum.

(iv) The 2004 B Bonds are subject to mandatory redemption as provided in Schedule I attached hereto and incorporated herein.

(v) The 2004 B Bonds are subject to optional redemption as provided in Schedule I attached hereto and incorporated herein.

(vi) The 2004 B Bonds shall be sold to Citigroup Global Markets, Inc., Ferris, Baker Watts, Incorporated and Crews & Associates, Inc. (the "Underwriters") pursuant to the terms of the Bond Purchase Agreement by and between the Underwriters and the Commission, at an aggregate purchase price of $172,554,973.40 (representing par value of $167,260,000.00, less an underwriting discount of $723,747.00, plus an original issue premium of $6,018,720.40 on the 2004 B Bonds. $88,495,606.35 of the aforesaid aggregate purchase price is represented by the funds paid by the Underwriter for the $85,650,000 State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series A Bonds (the "2004 Series A Bonds") immediately exchanged for the 2004 B Bonds in the same principal amount.

(vii) The 2004 B Bonds shall be dated the date of delivery thereof. The 2004 B Bonds shall be delivered in the form of fully registered 2004 B Bonds in denominations of $5,000 and any integral multiple thereof. The 2004 B Bonds shall be registered initially in the name of "Cede & Co.," as nominee of the Depository Trust Company and shall be evidenced by one Bond for each Maturity Date of 2004 B Bonds in the total aggregate principal amount of the 2004 B Bonds. Registered ownership of the 2004 B Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.04 of the First Consolidated Resolution. The 2004 B Bonds shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the dated date, payable on each Interest Payment Date until the date of maturity. The 2004 B Bonds shall mature on their respective Maturity Dates set forth on Schedule I. The 2004 B Bonds shall be numbered in such manner as shall be determined by the Bond Registrar. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Bondholder on such Record Date and shall be paid to the person in whose name the 2004 B Bond is registered at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Bond Registrar, notice whereof being given by telecopy, telegraph, telex, facsimile transmission, email transmission or other similar electronic means of communication, including a telephonic communication confirmed by writing or written transmission to the Bondholders not less 10 days prior to such special record date.

(viii) The 2004 B Bonds shall be issued in a single series and shall be designated as $167,260,000 State of West Virginia Higher Education Policy Commission Revenue Bonds (Higher Education Facilities) 2004 Series B.

(ix) Financial Guaranty Insurance Company (the "Bond Insurer") has offered a Bond Insurance Policy for the 2004 B Bonds pursuant to the terms of a commitment letter dated August 13, 2004 (the "Commitment"). The terms and provisions of the Commitment and the Bond Insurance Policy in the form attached collectively as Schedule II hereto and incorporated herein are hereby accepted and approved. The cost of the Bond Insurance Policy does not exceed one percent (1%) of the principal amount of the 2004 B Bonds. The provisions and terms required by the Bond Insurer for the 2004 B Bonds are set forth in Schedule II attached hereto and incorporated herein. Such terms and provisions are hereby accepted and approved.

(x) There shall be no Trustee, Remarketing Agent, Tender Agent, Auction Agent, Liquidity Provider, Credit Provider (other than the Bond Insurer), or other Service Provider with respect to the 2004 B Bonds.

(xi) The proceeds of the 2004 B Bonds are being issued to provide funds to (i) provide capital improvements at institutions of higher education located throughout the State, (ii) refund $9,365,000 in principal amount of the Series 1996 University System Bonds and (iii) pay the costs associated with the issuance of the 2004 B Bonds.

(xii) The West Virginia Municipal Bond Commission is hereby appointed as Paying Agent and Escrow Agent for the 2004 B Bonds.

(xiii) J.P. Morgan Trust Company, National Association is hereby appointed as Construction Trustee, Registrar and Transfer Agent for the 2004 B Bonds.

(xiv) The Schedule of Projects as provided in Schedule III is attached hereto and incorporated herein.

Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Resolution.

[The Remainder of Page Intentionally Left Blank]

The undersigned hereby certifies that the foregoing terms and conditions of the 2004 B Bonds are within the limitations prescribed by the Resolution, and the 2004 B Bonds may be issued upon such terms and conditions as authorized by the Resolution and this Certificate of Determination.

WITNESS my signature this 31st day of August, 2004.

WEST VIRGINIA HIGHER EDUCATION
POLICY COMMISSION

By: _____
Mary Clare Eros, Chairman

318941

Schedule I

2004 Series B Bonds
MATURITY SCHEDULES
Serial Bonds

Maturity	Principal	Coupon	Yield	Price
4/1/2005	5,710,000	6.000%	1.320%	102.709
4/1/2006	2,680,000	5.000%	1.620%	105.261
4/1/2007	3,535,000	2.100%	2.130%	99.924
4/1/2008	3,615,000	5.000%	2.520%	108.444
4/1/2009	3,795,000	2.800%	2.820%	99.913
4/1/2010	3,900,000	3.000%	3.040%	99.794
4/1/2011	1,640,000	3.250%	3.260%	99.939
4/1/2011	2,375,000	5.000%	3.260%	110.231
4/1/2012	4,190,000	5.000%	3.440%	110.332
4/1/2013	4,400,000	5.000%	3.630%	110.023
4/1/2014	4,620,000	5.000%	3.740%	110.066
4/1/2015	4,850,000	5.000%	3.870%	108.973
4/1/2016	5,090,000	5.000%	3.950%	108.306
4/1/2017	4,155,000	5.000%	4.030%	107.644
4/1/2018	4,360,000	5.000%	4.110%	106.987
4/1/2019	4,580,000	5.000%	4.200%	106.254
4/1/2020	4,810,000	5.000%	4.280%	105.607
4/1/2021	5,050,000	5.000%	4.370%	104.886
4/1/2022	5,300,000	5.000%	4.440%	104.328
4/1/2023	5,565,000	5.000%	4.520%	103.696
4/1/2024	5,845,000	5.000%	4.600%	103.068

$33,910,000 5.000% Term Bonds due April 1, 2029 at 4.820% (Price: 101.364)*

$43,285,000 5.000% Term Bonds due April 1, 2034 at 4.850% (Price: 101.134)*

* *Priced to call.*

Redemption Provisions:

(a) Optional Redemption of the 2004 B Bonds. The 2004 B Bonds maturing on or after April 1, 2015 are subject to redemption at the option of the Commission, prior to maturity, on and after April 1, 2014, in whole or in part at any time from amounts deposited with the Escrow Agent by the Commission and from other funds available therefore at the a redemption price of par, plus accrued interest to the date fixed for redemption.

(b) Mandatory Sinking Fund Redemption of the 2004 B Bonds. The 2004 B Bonds maturing April 1, 2029 and April 1, 2034 shall be subject to mandatory annual sinking fund redemption of principal on April 1, in the years and in the amounts set forth below, without premium, plus interest accrued to the dates of such redemption:

2004 B Bonds due April 1, 2029

Year	Principal Amount
2025	$6,135,000
2026	6,445,000
2027	6,765,000
2028	7,105,000
2029 (Maturity)	7,460,000

2004 B Bonds due April 1, 2034

Year	Principal Amount
2030	$7,835,000
2031	8,225,000
2032	8,635,000
2033	9,070,000
2034 (Maturity)	9,520,000

Schedule II

Bond Insurance Requirements

1. Definitions.

(a) A definition of "Bond Insurance Policy" shall be included, to read as follows: "the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees payment of principal of and interest on the Bonds*."

(b) A definition of "Bond Insurer" shall be included, to read as follows: "Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto."

(c) A definition of "Construction Trustee" shall mean J.P. Morgan Trust Company, National Association and its successors and assigns.

(d) A definition of "Commission" shall mean the West Virginia Higher Education Policy Commission.

(e) A definition of "MBC" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

2. Redemption Notices. Notice of any redemption of Bonds shall either (i) explicitly state that the proposed redemption is conditioned on there being on deposit in the applicable fund or account on the redemption date sufficient money to pay the full redemption price of the Bonds to be redeemed, or (ii) be sent only if sufficient money to pay the full redemption price of the Bonds to be redeemed is on deposit in the applicable fund or account.

3. Default-Related Provisions.

(a) Remaining funds in the Bond Proceeds Fund, to the extent there are no other available funds held under the authorizing document, shall be used to pay principal of or interest on the Bonds in the event of a payment default.

(b) The applicable authorizing document provisions describing events of default shall specify that in determining whether a payment default has occurred or whether a payment on the Bonds has been made under the authorizing document(s), no effect shall be given to payments made under the Bond Insurance Policy.

(c) Any acceleration of the Bonds or any annulment thereof shall be subject to the prior written consent of the Bond Insurer (if it has not failed to comply with its payment obligations under the Bond Insurance Policy).

(d) The Bond Insurer shall receive immediate notice of any payment default and notice of any other default known to the MBC or the Commission within 30 days of the MBC's or the Commission's knowledge thereof.

(e) For all purposes of the authorizing document provisions governing events of default and remedies, except the giving of notice of default to Bondholders, the Bond Insurer shall be

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* As used in this exhibit, "Bonds" means the Series of Bonds referred to in the Commitment Letter.

deemed to be the sole holder of the Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.

(f) If the authorizing document permits the MBC to waive any event of default, any such waiver shall be subject to the prior written consent of the Bond Insurer.

(g) The Bond Insurer shall be included as a party in interest and as a party entitled to (i) notify the Commission, the MBC, if any, or any applicable receiver of the occurrence of an event of default and (ii) request the MBC or receiver to intervene in judicial proceedings that affect the Bonds or the security therefor. The MBC or receiver shall be required to accept notice of default from the Bond Insurer.

4. Amendments and Supplements. Any amendment or supplement to the First Consolidated Resolution adopted by the Commission on June 4, 2004 and the Third Consolidated Resolution adopted by the Commission on August 20, 2004, the authorizing document or any other principal financing documents shall be subject to the prior written consent of the Bond Insurer. Any rating agency rating the Bonds must receive notice of each amendment and a copy thereof at least 15 days in advance of its execution or adoption. The Bond Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

5. Successor Trustees, Etc. No resignation or removal of the Construction Trustee, Escrow Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Construction Trustee, Escrow Agent or Bond Registrar, as applicable. The Bond Insurer shall be furnished with written notice of the resignation or removal of the Construction Trustee, Escrow Agent or Bond Registrar and the appointment of any successor thereto.

6. Defeasance Provisions. Only cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination of the foregoing) shall be used to effect defeasance of the Bonds unless the Bond Insurer otherwise approves. In the event of an advance refunding, the Commission shall cause to be delivered a verification report of an independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the authorizing document, if no separate escrow agreement is utilized), the terms of the escrow agreement or authorizing document, if applicable, shall be controlling.

7. Variable Rate Indebtedness.

(a) For all purposes, variable rate indebtedness shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness in not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, or if no debt is outstanding for the twelve prior months under the authorizing document, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the debt to be issued and (iii) (A) if interest on the indebtedness is excludable from gross income under

the applicable provisions of the Internal Revenue Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published), or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities; provided, however, that for purposes of any rate covenant measuring actual debt service coverage during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period.

(b) In the case of variable rate issues in which financial covenants are based on the synthetic fixed rate under a swap, utilization of the synthetic fixed rate under a Swap for purposes of performing any required calculations under the applicable legal documentation shall be permitted only if such documentation and the applicable Swap satisfy the requirements of Exhibit A attached hereto entitled "Swap Provider Guidelines," which shall be incorporated into the authorizing document.

8. Reporting Requirements. The Bond Insurer shall be provided with the following:

(a) Notice of the redemption, other than mandatory sinking fund redemption, of any of the Bonds, or of any advance refunding of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(b) Notice of the downgrading by any rating agency of the Commission's underlying public rating, or the underlying rating on the Bonds or any parity obligations, to "non-investment grade";

(c) Notice of any rate covenant violation with respect to the Bonds;

(d) Notice of any decline in enrollment at the institution by more than 5% in any year;

(e) Notice of any material events pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934, as amended; and

(f) Such additional information as the Bond Insurer may reasonably request from time to time.

9. Reimbursement of Expenses. The Commission shall pay or reimburse the Bond Insurer for any and all charges, fees, costs, and expenses that the Bond Insurer may reasonably pay or incur in connection with the following: (i) the administration, enforcement, defense, or preservation of any rights or security hereunder or under any other transaction document; (ii) the pursuit of any remedies hereunder, under any other transaction document, or otherwise afforded by law or equity, (iii) any amendment, waiver, or other action with respect to or related to this agreement or any other transaction document whether or not executed or completed; (iv) the violation by the Commission of any law, rule, or regulation or any judgment, order or decree applicable to it; (v) any advances or payments made by the Bond Insurer to cure defaults of the Commission under the transaction documents; or (vi) any litigation or other dispute in connection with this agreement, any other transaction document, or the transactions contemplated hereby or thereby, other than amounts resulting from the failure of the Bond Insurer to honor its payment obligations under the Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver, or consent proposed in respect of this agreement or any other transaction document. The obligations of the Commission to the Bond Insurer shall survive discharge and termination of this agreement.

10. Notice Addresses. The notice addresses for the Bond Insurer and the Fiscal Agent shall be included in the authorizing document as follows: Financial Guaranty Insurance Company, 125 Park Avenue, New York, New York 10017, Attention: Risk Management; and U.S. Bank Trust National Association, 100 Wall Street, 19th Floor, New York, New York 10005, Attention: Corporate Trust Department.

11. Claim Procedures.

(a) If, on the third day preceding any interest payment date for the Bonds there is not on deposit with the MBC sufficient moneys available to pay all principal of and interest on the Bonds due on such date, the MBC shall immediately notify Financial Guaranty and U.S. Bank Trust National Association, New York, New York or its successor as its Fiscal Agent (the "Fiscal Agent") of the amount of such deficiency. If, by said interest payment date, the Issuer has not provided the amount of such deficiency, the MBC shall simultaneously make available to Financial Guaranty and to the Fiscal Agent the registration books for the Bonds maintained by the MBC. In addition:

(i) The MBC shall provide Financial Guaranty with a list of the Bondholders entitled to receive principal or interest payments from Financial Guaranty under the terms of the Bond Insurance Policy and shall make arrangements for Financial Guaranty and its Fiscal Agent (1) to mail checks or drafts to Bondholders entitled to receive full or partial interest payments from Financial Guaranty and (2) to pay principal of the Bonds surrendered to the Fiscal Agent by the Bondholders entitled to receive full or partial principal payments from Financial Guaranty; and

(ii) The MBC shall, at the time it makes the registration books available to Financial Guaranty pursuant to (i) above, notify Bondholders entitled to receive the payment of principal of or interest on the Bonds from Financial Guaranty (1) as to the fact of such entitlement, (2) that Financial Guaranty will remit to them all or part of the interest payments coming due subject to the terms of the Bond Insurance Policy, (3) that, except as provided in paragraph (b) below, in the event that any Bondholder is entitled to receive full payment of principal from Financial Guaranty, such Bondholder must tender his Bond with the instrument of transfer in the form provided on the Bond executed in the name of Financial Guaranty, and (4) that, except as provided in paragraph (b) below, in the event that such Bondholder is entitled to receive partial payment of principal from Financial Guaranty, such Bondholder must tender his Bond for payment first to the MBC, which shall note on such Bond the portion of principal paid by the MBC, and then, with an acceptable form of assignment executed in the name of Financial Guaranty, to the Fiscal Agent, which will then pay the unpaid portion of principal to the Bondholder subject to the terms of the Bond Insurance Policy.

(b) In the event that the MBC has notice that any payment of principal of or interest on a Bond has been recovered from a Bondholder pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the MBC shall, at the time it provides notice to Financial Guaranty, notify all Bondholders that in the event that any Bondholder's payment is so recovered, such Bondholder will be entitled to payment from Financial Guaranty to the extent of such recovery, and the MBC shall furnish to Financial Guaranty its records evidencing the payments of principal of and interest on the Bonds which have been made by the MBC and subsequently recovered from Bondholders, and the dates on which such payments were made.

(c) Financial Guaranty shall, to the extent it makes payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy and, to evidence such subrogation, (i) in the case of subrogation as to claims for past due interest, the MBC shall note Financial Guaranty's rights as subrogee on the registration books maintained by the MBC upon receipt from Financial Guaranty of proof of the payment of interest thereon to the Bondholders of such Bonds and (ii) in the case of subrogation as to claims for past due principal, the MBC shall note Financial Guaranty's rights as subrogee on the registration books for the Bonds maintained by the MBC upon receipt of proof of the payment of principal thereof to the Bondholders of such Bonds. Notwithstanding anything in this authorizing document or the Bonds to the contrary, the MBC shall make payment of such past due interest and past due principal directly to Financial Guaranty to the extent that Financial Guaranty is a subrogee with respect thereto.

Exhibit A

Swap Provider Guidelines

Any Swap entered into in connection with the issuance or incurrence by the Commission of variable rate indebtedness secured with the Bonds by a parity lien on Net Revenues shall meet the following guidelines and, for purposes of calculating "Debt Service" and establishing compliance with financial covenants under the authorizing document shall be treated as follows:

A. Long-Dated Swaps - Term or Weighted Average Maturity of Ten Years or More.

1. The Swap provider must be rated at least A-/A3 or better by Standard & Poor's and Moody's (the "Initial Rating Requirement").

2. Assuming satisfaction of the Initial Rating Requirement, and thereafter as long as the long term indebtedness of the Swap provider or the claims paying ability of the Swap provider does not fall below Baa2 or BBB by either Standard & Poor's or Moody's (the "Minimum Rating Requirement"), all interest rate assumptions for purposes of establishing or demonstrating compliance with a financial covenant (*e.g.*, rate covenant, reserve requirement, additional bonds test, asset transfer test, etc.) may be based upon the synthetic fixed interest rate under the Swap.

   Failure to maintain a Swap provider holding the Minimum Rating Requirement or, if the issuer elects, failure to replace any such Swap provider by another Swap provider which holds the Initial Rating Requirement within ten business days, will have the following effects: (1) compliance with any required rate covenant for the preceding Fiscal Year will be based on the actual interest paid on the Variable Rate Indebtedness during such Fiscal Year without regard to the Swap; (2) in the case of any required debt service reserve fund, the amount required to be on deposit therein will be re-calculated based on the formula described in Section 7(a) (containing variable rate debt service calculation conventions) of the exhibit entitled "Legal Documentation Requirements," calculated as of the date of original issuance of the variable rate indebtedness and any resulting deficiency will be restored within the same one year restoration period established in the bond documentation for curing Debt Service Reserve Fund deficiencies; and (3) any "forward-looking" financial covenant based upon "Debt Service", "Annual Debt Service" or "Maximum Annual Debt Service" will be based upon the formula described in Section 7(a) (containing variable rate debt service calculation conventions) of the exhibit entitled "Legal Documentation Requirements," calculated as of the date the required calculation is made.

B. Short-Dated Swaps Having Terms or Weighted Average Maturities of Ten Years or Less, Whereupon Related Bonds Automatically Convert to a Pre-Set Fixed Rate.

The embedded Swap provider must meet the Initial Rating Requirement. With respect to financial covenants, the synthetic fixed rate based on the Swap may be utilized for purposes of demonstrating or establishing compliance with the applicable covenant. Failure to maintain a Swap provider holding the Minimum Rating Requirement during the embedded Swap period will require replacement of the Swap provider within ten business days. Failure to replace will require re-calculation of the applicable financial covenants in the manner outlined in A.2 above.

Schedule III

Schedule of Projects

HIGHER EDUCATION INSTITUTIONS **Table 1**

Summary of Potential Projects for Bond Funding

Updated August 30, 2004

Inst	Project Name	List of Potential Projects for Bond Funding
BSC	Phase II - ADA Access & Parking Improvement	750,000
BSC	Summersville Center - Purchase vs. Lease	1,335,000
BSC/NRCTC	Greenbrier Campus Project	1,000,000
Bluefield State College Total		**3,085,000**
CU	White Hall Renovations	4,600,000
Concord University Total		**4,600,000**
EWVCTC	Classroom/Laboratory/General Support Facility	8,000,000
Eastern WV CTC Total		**8,000,000**
FSU	Engineering Technology Building	9,500,000
FSU	Hunt Haught Hall - Elevator/Entrance	1,000,000
FSU	Musick Library Reno. & Inner Campus Improvement	2,000,000
FSU	CTC/High School Joint SBA Project (1)	-
Fairmont State University Total		**12,500,000**
GSC	Science Hall - Renovation	5,000,000
Glenville State College Total		**5,000,000**
MU	Biotechnology Science Center/Development Center	6,900,000
MU	Smith Hall Repairs/Upgrades	6,000,000
MU	Morrow Library Renovation (2nd Floor)	750,000
MU	Harris Hall HVAC Upgrade	2,100,000
MU	Campus Wiring Infrastructure	1,900,000
MU	Visual Arts Center	1,100,000
MU	Student Health & Wellness Center	4,000,000
MU	Facilities Building Addition & Renovation	3,500,000
MU	Community College Facilities/SBA Project	4,253,559
Marshall University Total		**30,503,559**
SU	Classroom Building	12,500,000
Shepherd University Total		**12,500,000**
SWVCTC	Downtown Mercantile Building	318,000
SWVCTC	Technology Center	6,500,000
SWVCTC	Logan Building Renovation	417,000
SWVCTC	Lincoln County Building	1,500,000
SWVCTC	Williamson Campus Renovations	$865,000
Southern WV CTC Total		**9,600,000**

HIGHER EDUCATION INSTITUTIONS

Table 1

Summary of Potential Projects for Bond Funding

Updated August 30, 2004

Inst	Project Name	List of Potential Projects for Bond Funding
WLSC	Fine Arts Building Structural Repair	2,000,000
West Liberty State College Total		**2,000,000**
WVNCC	Replace HVAC & Misc. Improvements - B & O Building	410,000
WVNCC	Replace Windows/Doors in B & O Building	600,000
WVNCC	Replace Hazel Atlas Building	7,900,000
WV Northern CC Total		**8,910,000**
WVSOM	Center for Technology and Rural Medicine	4,000,000
WV School of Osteopathic Medicine Total		**4,000,000**
WVSU	Building Upgrades for Energy Conservation	1,350,000
WV State University Total		**1,350,000**
WVU	Infrastructure Downtown	12,500,000
WVUP	Main Building Subsidence Issues(2)	2,735,000
WVU	Jackson's Mill Fire Training Academy	3,772,500
WVU	Engineering Sciences Brick Façade	5,500,000
WVUIT	Fire Marshal Repairs - Old Main, Engineering	1,400,000
WVU	Brooks Hall Renovation	25,000,000
WVU	Allen Percival Hall Abatement	4,000,000
WVUHSC	Strategic Research Learning Center	$2,518,559
WVU & REGIONAL CAMPUSES TOTAL		**57,426,059**
HEPC	Beckley Center Equipment	2,000,000
Higher Education Policy Commission Total		**2,000,000**
GRAND TOTAL		**161,474,618**

(1) Fairmont may need to provide up to $1 million in funding for this project by reallocating total bond funds received.

(2) WVU may need to accommodate WVUP's funding requirements for this project by reallocating total bond funds received, or from other capital available to WVU.

(3) If bond proceeds are less than the amount needed to fund the approved projects, funding for each project will be reduced proportionally to match the funds available unless the bond proceeds for specific projects cannot be spent with in the three year time frame required by the IRS.

(4) Upon approval by an institution's Governing Board and the Commission, and if permitted by bond covenants, an institution may allocate funds from one project to another on this listing, within reasonable limits.

(5) Upon approval by an institution's Governing Board and the Commission, and with the specific commitment to pay annual debt service from the institution's capital tuition fees, an institution may increase or add projects to this listing, within reasonable limits.

HEPC BOND SUPPLEMENT LISTING

AUGUST 27, 2004 RECOMMENDATIONS

INST	PROJECT	AMOUNT $152M	ADJUSTMENT
WVUHSC	Strategic Research Learning Center		$2,518,559
WVNCTC	Replace Hazel Atlas Building	$7,500,000	$400,000
NRCTC/BSC	Greenbriar Campus Project		$1,000,000
SWVCTC	Williamson Campus Renovations		$865,000
WVSU	Building Upgrades for Energy Conservation	$850,000	$500,000
MU	Community College & Student Health Facilities	$6,500,000	$1,753,559
EWVCTC	Classroom/Laboratory/General Support Facility	$6,000,000	$2,000,000
	Other projects	$131,587,500	
	SUBTOTALS	$152,437,500	$9,037,118
	NET PROCEEDS	$161,474,618	$161,474,618
	Incremental Funds for Adjustments	$9,037,118	

HIGHER EDUCATION INSTITUTIONS **Table 1**

Summary of Potential Projects for Bond Funding

Updated August 30, 2004

Inst	Project Name	List of Potential Projects for Bond Funding
BSC	Phase II - ADA Access & Parking Improvement	750,000
BSC	Summersville Center - Purchase vs. Lease	1,335,000
BSC/NRCTC	Greenbrier Campus Project	1,000,000
Bluefield State College Total		**3,085,000**
CU	White Hall Renovations	4,600,000
Concord University Total		**4,600,000**
EWVCTC	Classroom/Laboratory/General Support Facility	8,000,000
Eastern WV CTC Total		**8,000,000**
FSU	Engineering Technology Building	9,500,000
FSU	Hunt Haught Hall - Elevator/Entrance	1,000,000
FSU	Musick Library Reno. & Inner Campus Improvement	2,000,000
FSU	CTC/High School Joint SBA Project **(1)**	-
Fairmont State University Total		**12,500,000**
GSC	Science Hall - Renovation	5,000,000
Glenville State College Total		**5,000,000**
MU	Biotechnology Science Center/Development Center	6,900,000
MU	Smith Hall Repairs/Upgrades	6,000,000
MU	Morrow Library Renovation (2nd Floor)	750,000
MU	Harris Hall HVAC Upgrade	2,100,000
MU	Campus Wiring Infrastructure	1,900,000
MU	Visual Arts Center	1,100,000
MU	Student Health & Wellness Center	4,000,000
MU	Facilities Building Addition & Renovation	3,500,000
MU	Community College Facilities/SBA Project	4,253,559
Marshall University Total		**30,503,559**
SU	Classroom Building	12,500,000
Shepherd University Total		**12,500,000**
SWVCTC	Downtown Mercantile Building	318,000
SWVCTC	Technology Center	6,500,000
SWVCTC	Logan Building Renovation	417,000
SWVCTC	Lincoln County Building	1,500,000
SWVCTC	Williamson Campus Renovations	$865,000
Southern WV CTC Total		**9,600,000**

HIGHER EDUCATION INSTITUTIONS **Table 1**

Summary of Potential Projects for Bond Funding

Updated August 30, 2004

Inst	Project Name	List of Potential Projects for Bond Funding
WLSC	Fine Arts Building Structural Repair	2,000,000
West Liberty State College Total		**2,000,000**
WVNCC	Replace HVAC & Misc. Improvements - B & O Building	410,000
WVNCC	Replace Windows/Doors in B & O Building	600,000
WVNCC	Replace Hazel Atlas Building	7,900,000
WV Northern CC Total		**8,910,000**
WVSOM	Center for Technology and Rural Medicine	4,000,000
WV School of Osteopathic Medicine Total		**4,000,000**
WVSU	Building Upgrades for Energy Conservation	1,350,000
WV State University Total		**1,350,000**
WVU	Infrastructure Downtown	12,500,000
WVUP	Main Building Subsidence Issues(2)	2,735,000
WVU	Jackson's Mill Fire Training Academy	3,772,500
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WVU & REGIONAL CAMPUSES TOTAL		**57,426,059**
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Higher Education Policy Commission Total		**2,000,000**
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(4) Upon approval by an institution's Governing Board and the Commission, and if permitted by bond covenants, an institution may allocate funds from one project to another on this listing, within reasonable limits.

(5) Upon approval by an institution's Governing Board and the Commission, and with the specific commitment to pay annual debt service from the institution's capital tuition fees, an institution may increase or add projects to this listing, within reasonable limits.

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 18B, ARTICLE 1, OF THE WEST VIRGINIA CODE, AND CHAPTER 18B, ARTICLE 1, OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

M.J., Colleges and Universities.

W. Va. Law Review. — Student Work, "The AALS Sexual Orientation Policy: The Argument Against Barring Military Recruiters from Law School Campuses," 95 W. Va. L. Rev. 163 (1992).

ARTICLE 1.

GOVERNANCE.

Sec.
18B-1-1. Legislative purpose; creation of governing boards.
18B-1-1a. Goals for post-secondary education.
18B-1-1b, 18B-1-1c. [Repealed].
18B-1-1d. Retirement and separation incentives.
18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.
18B-1-2. Definitions.
18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education policy commission and governing boards.
18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.
18B-1-5. [Repealed.]
18B-1-5a. Pilot program of delivering educational services via distance learning.
18B-1-6. Rule making.
18B-1-7. Supervision by governing boards; delegation to president.
18B-1-8, 18B-1-8a. [Repealed].
18B-1-8b. Marshall university graduate college.
18B-1-9. Powers and duties of institutional presidents.
18B-1-10. [Repealed.]
18B-1-11. Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.

Cited in University of W. Va. Bd. of Trustees ex rel. W. Va. Univ. v. Graf, 205 W. Va. 118, 516 S.E.2d 741 (1999), *this is a per curiam opinion.*

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§ 18B-1-1. Legislative purpose; creation of governing boards.

The purpose of the Legislature in the enactment of this article is to establish a governance structure for the state institutions of higher education consisting of a board to govern the University of West Virginia system, designated the "University of West Virginia Board of Trustees," and a board to govern the state college system, designated the "Board of Directors of The State College System."

In furtherance of this purpose, there are hereby created two governing boards to be known as the university of West Virginia board of trustees, and the board of directors of the state college system, which shall be corporations and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use common seals. (1989, c. 64.)

Cited in Graf v. West Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992).

§ 18B-1-1a. Goals for post-secondary education.

(a) *Findings.* — The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable within the fiscal constraints of the state and for the state's residents to participate and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

(1) West Virginia leads a national trend toward an aging population wherein a declining percentage of working-age adults will be expected to support a growing percentage of retirees. Public school enrollments statewide have declined and will continue to do so for the foreseeable future with a few notable exceptions in growing areas of the state. As the state works to expand and diversify its economy, it is vitally important that young people entering the work force from our education systems have the knowledge and skills to succeed in the economy of the twenty-first century. It is equally important, however, that working-age adults who are the large majority of the current and potential work force also possess the requisite knowledge and skills and the ability to continue learning throughout their lifetimes. The reality for West Virginia is that its future rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

(2) Post-secondary education is changing throughout the nation. Place-bound adults, employers and communities are demanding education and student services that are accessible at any time, at any place and at any pace. Institutions are seizing the opportunity to provide academic content and support services on a global scale by designing new courseware, increasing information technology-based delivery, increasing access to library and other information resources and developing new methods to assess student competency rather than "seat time" as the basis for recognizing learning, allocating resources and ensuring accountability. In this changing environment, the state must take into account the continuing decline in the public school-age population, the limits of its fiscal resources and the imperative need to serve the educational needs of working-age adults. West Virginia cannot afford to finance quality higher education systems that aspire to offer a full array of programs while competing among themselves for a dwindling pool of traditional applicants. The competitive position of the state and its institutions will depend fundamentally on its capacity to reinforce the quality and differentiation of its institutions through policies that encourage focus and collaboration.

(3) The current accountability system is exceptionally complicated and largely defines accountability in terms of institutional procedures. It also is not well equipped to address cross-cutting issues such as regional economic and work force development, community and technical college services, collaboration with the public schools to improve quality and student participation rates,

access to graduate education and other broad issues of state interest. Severe fiscal constraints require West Virginia to make maximum use of existing assets to meet new demands. New investments must be targeted to those initiatives designed to enhance and reorient existing capacity, provide incentives for collaboration and focus on the new demands. It must have a single accountability point for developing, building consensus around and sustaining attention to the public policy agenda and for allocating resources consistent with this policy agenda.

(4) The state should make the best use of the expertise that private institutions of higher education can offer and recognize the importance of their contributions to the economic, social and cultural well-being of their communities.

(5) The system of public higher education should be open and accessible to all persons, including persons with disabilities and other persons with special needs.

(b) *Compact with higher education.* — In pursuance of these findings, it is the intent of the Legislature to engage higher education in a statewide compact for the future of West Virginia, as provided in article one-a [§§ 18B-1A-1 et seq.] of this chapter, that focuses on a public policy agenda that includes, but is not limited to, the following:

(1) Diversifying and expanding the economy of the state;

(2) Increasing the competitiveness of the state's work force and the availability of professional expertise by increasing the number of college degrees produced to the level of the national average and significantly improving the level of adult functional literacy; and

(3) Creating a system of higher education that is equipped to succeed at producing these results.

(c) *Elements of the compact with higher education.* — It is the intent of the Legislature that the compact with higher education include the following elements:

(1) A step-by-step process, as provided in articles one-b and three-c [§§ 18B-1B-1 et seq. and 18B-3C-1 et seq.] of this chapter, which will enable the state to achieve its public policy agenda through a system of higher education equipped to assist in producing the needed results. This process includes, but is not limited to, separate institutional compacts with state institutions of higher education that describe changes in institutional missions in the areas of research, graduate education, admission standards, community and technical college education and geographical areas of responsibility to accomplish the following:

(A) A capacity within higher education to conduct research to enhance West Virginia in the eyes of the larger economic and educational community and to provide a basis for West Virginia's improved capacity to compete in the new economy through research oriented to state needs;

(B) Access to stable and continuing graduate level programs in every region of the state, particularly in teacher education related to teaching within a subject area to improve teacher quality;

(C) Universities and colleges that have focused missions, their own points of distinction and quality and strong links with the educational, economic and social revitalization of their regions and the state of West Virginia;

(D) Greater access and capacity to deliver technical education, work force development and other higher education services to place-bound adults thus improving the general levels of post-secondary educational attainment and literacy;

(E) Independently accredited community and technical colleges in every region of the state, to the extent possible, that: (i) Assess regional needs; (ii) ensure access to comprehensive community and technical college and work force development services within each of their respective regions; (iii) convene and act as a catalyst for local action in collaboration with regional leaders, employers and other educational institutions; (iv) provide and, as necessary, broker educational services; (v) provide necessary student services; (vi) fulfill such other aspects of the community and technical college mission and general provisions for community and technical colleges as provided for in article three-c [§§ 18B-3C-1 et seq.] of this chapter; and (vii) make maximum use of existing infrastructure and resources within their regions to increase access, including, but not limited to, vocational technical centers, schools, libraries, industrial parks and work sites.

(2) Providing additional resources, subject to availability and appropriation by the Legislature, as provided in article one-a [§§ 18B-1A-1 et seq.] of this chapter, to make the state institutions of higher education more competitive with their peers, assist them in accomplishing the elements of the public policy agenda and ensure the continuity of academic programs and services to students.

(3) Establishing a process for the allocation of additional resources which focuses on achieving the elements of the public policy agenda and streamlines accountability for the step-by-step progress toward achieving these elements within a reasonable time frame as provided in article one-a [§§ 18B-1A-1 et seq.] of this chapter.

(4) Providing additional flexibility to the state institutions of higher education by making permanent the exceptions granted to higher education relating to travel rules and vehicles pursuant to sections forty-eight through fifty-three [§§ 5A-3-48 through 5A-3-53], inclusive, article three, chapter five-a of this code and section eleven [§ 12-3-11], article three, chapter twelve of this code.

(5) Revising the higher education governance structure to make it more responsive to state and regional needs.

(d) *General goals for post-secondary education.* — In pursuance of the findings and the development of institutional compacts with higher education for the future of West Virginia pursuant to article one-a [§§ 18-1A-1 et seq.] of this chapter, it is the intent of the Legislature to establish general goals for post-secondary education and to have the commission report the progress toward achieving these goals in the higher education report card required pursuant to section eight [§ 18B-1B-8], article one-b of this chapter and, where applicable, made a part of the institutional compacts. The Legislature establishes the general goals as follows:

(1) The overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to encourage citizens of all ages to increase their knowledge and skills. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education to: (i) Improve the quality of public education, particularly with respect to ensuring that the needs of public schools for teachers and administrators is met; (ii) inform public school students, their parents and teachers of the academic preparation that students need to be prepared adequately to succeed in their selected fields of study and career plans; and (iii) improve instructional programs in the public schools so that the students enrolling in post-secondary education are adequately prepared;

(B) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's work force investment office to promote the effective and efficient utilization of work force investment and other funds to: (i) Provide greatly improved access to information and services for individuals and employers on education and training programs, financial assistance, labor markets and job placement; (ii) increase awareness among the state's citizens of the opportunities available to them to improve their basic literacy, work force and post-secondary skills and credentials; and (iii) help improve their motivation to take advantage of available opportunities by making the system more seamless and user friendly;

(C) Collaboration, coordination and interaction between public and post-secondary education on the development of seamless curriculum in technical preparation programs of study between the secondary and post-secondary levels; and

(D) Opportunities for advanced high school students to obtain college credit prior to high school graduation.

(2) The number of degrees produced per capita by West Virginia institutions of higher education is at the national average. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's work force investment office to promote to individuals of all ages the benefits of increased post-secondary educational attainment;

(B) Assistance in overcoming the financial barriers to post-secondary education for both traditional and nontraditional students;

(C) An environment within post-secondary education that is student-friendly and that encourages and assists students in the completion of degree requirements within a reasonable time frame. The environment also should expand participation for the increasingly diverse student population;

(D) A spirit of entrepreneurship and flexibility within post-secondary education that is responsive to the needs of the current work force and other nontraditional students for upgrading and retraining college-level skills; and

(E) The expanded use of technology for instructional delivery and distance learning.

(3) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed, have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which: (i) Are relevant and affordable; (ii) allow them to gain transferrable credits and associate or higher level degrees; (iii) provide quality technical education and skill training; and (iv) are responsive to business, industry, labor and community needs.

(4) State institutions of higher education prepare students to practice good citizenship and to compete in a global economy in which good jobs require an advanced level of education and skills which far surpasses former requirements. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The development of entrepreneurial skills through programs such as the rural entrepreneurship through action learning (REAL) program which include practical experience in market analysis, business plan development and operations;

(B) Elements of citizenship development are included across the curriculum in core areas, including practical applications such as community service, civic involvement and participation in charitable organizations and in the many opportunities for the responsible exercise of citizenship that higher education institutions provide;

(C) Students are provided opportunities for internships, externships, work study and other methods to increase their knowledge and skills through practical application in a work environment;

(D) College graduates meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(E) College graduates meet or exceed national and international standards for performance in their fields through national accreditation of programs and through outcomes assessment of graduates; and

(F) Admission and exit standards for students, professional staff development, program assessment and evaluation and other incentives are used to improve teaching and learning.

(5) State institutions of higher education exceed peer institutions in other states in measures of institutional productivity and administrative efficiency. Efforts in pursuit of this goal include, but are not limited to:

(A) The establishment of systematic ongoing mechanisms for each state institution of higher education to set goals, to measure the extent to which those goals are met and to use the results of quantitative evaluation processes to improve institutional effectiveness;

(B) The combination and use of resources, technology and faculty to their maximum potential in a way that makes West Virginia higher education more productive than its peer institutions in other states while maintaining educational quality; and

(C) The use of systemic program review to determine how much duplication is necessary to maintain geographic access and to eliminate unnecessary duplication.

(6) Post-secondary education enhances state efforts to diversify and expand the economy of the state. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The focus of resources on programs and courses which offer the greatest opportunities for students and the greatest opportunity for job creation and retention in the state;

(B) The focus of resources on programs supportive of West Virginia employment opportunities and the emerging high-technology industries;

(C) Closer linkages among higher education and business, labor, government and community and economic development organizations; and

(D) Clarification of institutional missions and shifting of resources to programs which meet the current and future work force needs of the state.

(7) Faculty and administrators are compensated on a competitive level with peer institutions to attract and keep quality personnel at state institutions of higher education.

(8) The tuition and fee levels for in-state students are competitive with those of peer institutions and the tuition and fee levels for out-of-state students are set at a level which at the least covers the full cost of instruction. (1993, c. 47; 1995, c. 99; 2000, c. 100; 2001, c. 110.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, rewrote the section.

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, substituted "work force" for "workforce" throughout; and in (d)(7), deleted "staff" following "Faculty".

§§ 18B-1-1b, 18B-1-1c.

Repealed by Acts 2000, c. 100.

Editor's notes. — Former §§ 18B-1-1b and 18B-1-1c (enacted by Acts 1993, c. 47 and amended by Acts 1995, c. 99) concerning the implementations of findings and the focusing of resources to maximize oppurtinities, were repealed, effective June 30, 2001, by § 18B-1A-8 (enacted by Acts 2000, c. 100. effective June 17, 2000).

§ 18B-1-1d. Retirement and separation incentives.

(a) Notwithstanding any other provisions of this code to the contrary, each state institution of higher education may include in its strategic plan, pursuant to section one-c [§ 18B-1-1c] of this article, policies that offer various incentives for voluntary, early or phased retirement of employees or voluntary separation from employment when necessary to implement programmatic changes effectively pursuant to the findings, directives, goals and objectives of this article: Provided, That such incentives for voluntary, early or phased retirement of employees or voluntary separation from employment must be submitted by the governing board to the legislative joint committee on pensions and retirement and approved before such policies are adopted as part of the institution's strategic plan.

(b) Effective the first day of July, two thousand one, each state institution of higher education may implement, under its institutional compact, created pursuant to section two [§ 18B-1A-2], article one-a of this chapter, policies that

offer various incentives for voluntary, early or phased retirement of employees, or voluntary separation from employment, when necessary to implement programmatic changes effectively: Provided, That the institution shall meet all the requirements, including the requirement for obtaining legislative approval, set forth in this section.

(c) The policies may include the following provisions:

(1) Payment of a lump sum to an employee to resign or retire;

(2) Continuation of full salary to an employee for a predetermined period of time prior to the employee's resignation or retirement and a reduction in the employee's hours of employment during the predetermined period of time;

(3) Continuation of insurance coverage pursuant to the provisions of article sixteen [§§ 5-16-1 et seq.], chapter five of this code for a predetermined period;

(4) Continuation of full employer contributions to an employee's retirement plan during a phased retirement period; and

(5) That an employee retiring pursuant to an early or phased retirement plan may begin collecting an annuity from the employee's retirement plan prior to the statutorily designated retirement date without terminating his or her service with the institution.

(d) No incentive provided for in this section shall be granted except in furtherance of programmatic changes undertaken pursuant to the findings, directives, goals and objectives set forth in this article.

(e) No incentive proposed by an institution pursuant to this section shall become a part of the institution's approved strategic plan or institutional compact or be implemented without approval of the legislative joint committee on pensions and retirement.

Any costs associated with any incentive adopted or implemented in accordance with this section shall be borne entirely by the institutions and no incentive shall be granted that imposes costs on the retirement systems of the state or the public employees insurance agency unless those costs are paid entirely by the institutions.

(f) The Legislature further finds and declares that there is a compelling state interest in restricting the availability and application of these incentives to individual employees determined by the institutions to be in furtherance of the aims of this section and nothing herein shall be interpreted as granting a right or entitlement of any such incentive to any individual or group of individuals. Any employee granted incentives shall be ineligible for reemployment by the institutions during or after the negotiated period of his or her incentive concludes, including contract employment in excess of five thousand dollars per fiscal year.

(g) The West Virginia network for educational telecomputing may utilize the incentives contained in any policy approved by the legislative joint committee on pensions and retirement pursuant to this section. (1995, c. 99; 1996, c. 119; 2000, c. 100.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, rewrote the section.

§ 18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.

(a) *Purpose.* — The purpose of this section is as follows:

(1) To assist students in the planning and preparation for success in college and other post-secondary education if their education major interests require such formal education after high school;

(2) To establish the minimum expected level of knowledge, skill and competency a student must possess to be prepared fully for college and other post-secondary education at state institutions of higher education;

(3) To implement a method for communicating the minimum level of knowledge, skill and competency to students, parents, educators and counselors in the public schools, and admissions officers, advisors and faculty in the higher education institutions; and

(4) To assure that the teacher preparation programs in state institutions of higher education prepare educators to, at a minimum, deliver instruction necessary to prepare students fully for college and other post-secondary education or gainful employment consistent with the provisions of section eight [§ 18-2E-8], article two-e, chapter eighteen of this code.

(b) *Joint rule.* — On or before the first day of October, one thousand nine hundred ninety-six, the higher education governing boards shall promulgate a joint rule to achieve the purposes of subsection (a) of this section. In the development of such rule, the governing boards shall consult with the state board and the jobs through education employer panel, established pursuant to section eight, article two-e, chapter eighteen of this code, and shall collaborate with the state board in the establishment of compatible practices within their separate systems.

(c) *Assessment of student readiness.* — To provide continuous assessment and program improvement in the preparation of high school students for success in college or other post-secondary education, the higher education governing boards shall communicate to the state board and the legislative oversight commission on education accountability by the first day of December in each year, beginning in December, one thousand nine hundred ninety-seven, the number of graduates from the public schools in the state by high schools who were accepted in the last calendar year for enrollment at each of the state institutions of higher education within one year of graduation, and whose knowledge, skill and competency were below the minimum expected levels for full preparation as defined by the governing boards. The governing boards also shall report the areas in which the knowledge, skill and competency of the students were below the minimum expected level. The state board shall provide information to each of the high schools of the state for graduates from the high school. (1996, c. 112; 1999, c. 96.)

Effect of amendment of 1999. — The amendment, effective July 1, 1999, in (c), deleted "or as soon thereafter as the establishment of an electronic portfolio system permits" following "one thousand nine hundred ninety-seven" and deleted "whose electronic portfolio

indicated readiness for college or other post-secondary education" following "one year of graduation."

§ 18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c [§§ 18C-1-1 et seq.] of this code have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) For the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, only, "governing board" or "board" means the higher education interim governing board created pursuant to article one-c [§§ 18B-1C-1 et seq.] of this chapter; and, beginning on the first day of July, two thousand one, "governing board" or "board" means the institutional board of governors of West Virginia university, Marshall university, the West Virginia school of osteopathic medicine, Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college and West Virginia state college, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

(b) Beginning on the first day of July, two thousand one, "governing boards" or "boards" means the institutional boards of governors created pursuant to subsection (b), section one [§ 18B-2A-1(b)], article two-a of this chapter;

(c) "Freestanding community and technical colleges" means southern West Virginia community and technical college, West Virginia northern community and technical college and eastern West Virginia community and technical college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community college" or "community colleges" means community and technical college or colleges as those terms are defined in this section;

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which have defined community and technical college responsibility districts and programs in accordance with the provisions of sections four and six [§§ 18B-3C-4 and 18B-3C-6], article three-c of this chapter;

(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in article three-c [§§ 18B-3C-1 et seq.] of this chapter.

(g) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three [§ 18B-3C-3], article three-c of this chapter;

(h) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Higher education policy commission" or "commission" means the commission created pursuant to section one [§ 18B-1B-1], article one-b of this chapter;

(j) "Chancellor" means the chief executive officer of the higher education policy commission employed pursuant to section five [§ 18B-1B-5], article one-b of this chapter;

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

(*l*) "Post-secondary vocational education programs" means any college-level course or program beyond the high school level provided through an institution of higher education under the jurisdiction of a governing board which results in or may result in the awarding of a two-year associate degree.

(m) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(n) For the purposes of this chapter and chapter eighteen-c of this code, "senior administrator" means the vice chancellor for administration employed by the chancellor in accordance with section two [§ 18B-4-2], article four of this chapter. The vice chancellor for administration shall assume all the powers and duties that are assigned by law to the senior administrator;

(o) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;

(p) "State institution of higher education" means any university, college or community and technical college under the direct or indirect jurisdiction of a governing board as that term is defined in this section;

(q) "Regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university, and West Virginia university institute of technology. Each regional campus shall adopt separate strategic plans required by section one-c [§ 18B-1-1c] of this article;

(r) The advisory board previously appointed for the West Virginia graduate college shall be known as the "board of visitors" and shall provide guidance to the Marshall university graduate college;

(s) "Institutional compact" means a compact between a state institution of higher education and the commission, as described in section two [§ 18B-1A-2], article one-a of this chapter.

(t) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three [§ 18B-1A-3], article one-a of this chapter;

(u) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight [§ 18B-3C-8], article three-c of this chapter;

(v) "Sponsoring institution" means the state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight [§ 18B-3C-8], article three-c of this chapter;

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

(x) "Broker" or the act of "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered by a sponsoring institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state; and

(y) "Joint commission for vocational-technical-occupational education" or "joint commission" means the commission established pursuant to article three-a [§§ 18B-3A-1 et seq.] of this chapter. (1989, c. 64; 1992, c. 61; 1993, c. 47; 1995, c. 99; 1996, c. 119; 1997, c. 85; 2000, c. 100.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, rewrote the section.

Editor's notes. — The Higher Education Facilities Act of 1963, referred to in (h), has been superseded generally by 20 USCS §§ 1132a et seq.

§ 18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education policy commission and governing boards.

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen [§§ 18-1-1 et seq.] of this code and transferred to the board of trustees and board of directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of trustees and board of directors, to the extent they are in effect on the seventeenth day of June, two thousand, are hereby transferred to the interim governing board created in article one-c [§§ 18B-1C-1 et seq.] of this chapter and shall be exercised and performed by the interim governing board until the first day of July, two thousand one, as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of trustees and the board of directors and property vested in either of the boards separately, formerly existing under the provisions of chapter eighteen-b of this code, are hereby transferred to the interim governing board created in article one-c [§§ 18B-1C-1 et seq.] of this chapter until the first day of July, two thousand one. Property transferred to or vested in the board of trustees and board of directors shall include:

(1) All property vested in the board of governors of West Virginia university and transferred to and vested in the West Virginia board of regents;

(2) All property acquired in the name of the state board of control or the West Virginia board of education and used by or for the state colleges and universities and transferred to and vested in the West Virginia board of regents;

(3) All property acquired in the name of the state commission on higher education and transferred to and vested in the West Virginia board of regents; and

(4) All property acquired in the name of the board of regents and transferred to and vested in the respective board of trustees and board of directors.

(c) Each valid agreement and obligation previously transferred to or vested in the board of trustees and board of directors formerly existing under the provisions of chapter eighteen-b of this code is hereby transferred to the interim governing board until the first day of July, two thousand one as those agreements and obligations may apply to the institutions under its jurisdiction. Valid agreements and obligations transferred to the board of trustees and board of directors shall include:

(1) Each valid agreement and obligation of the board of governors of West Virginia university transferred to and deemed the agreement and obligation of the West Virginia board of regents; (2) Each valid agreement and obligation of the state board of education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia board of regents;

(3) Each valid agreement and obligation of the state commission on higher education transferred to and deemed the agreement and obligation of the West Virginia board of regents; and (4) Each valid agreement and obligation of the board of regents transferred to and deemed the agreement and obligation of the respective board of trustees and board of directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective board of trustees and board of directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the interim governing board until the first day of July, two thousand one, and shall continue in effect and shall be deemed the orders, resolutions and rules of the interim governing board until rescinded, revised, altered or amended by the commission or the governing boards in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include:

(1) Those adopted or promulgated by the board of governors of West Virginia university and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law;

(2) Those respecting state colleges and universities adopted or promulgated by the West Virginia board of education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law;

(3) Those adopted or promulgated by the state commission on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and

(4) Those adopted or promulgated by the board of regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until re-

scinded, revised, altered or amended by the respective board of trustees or board of directors in the manner and to the extent authorized and permitted by law.

(e) Title to all real property transferred to or vested in the interim governing board pursuant to this section of the code is hereby transferred to the commission effective the first day of July, two thousand one. The board of governors for each institution may request that the commission transfer title to the board of governors of any real property specifically identifiable with that institution or the commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property. The title to any real property that is jointly utilized by institutions or for statewide programs under the jurisdiction of the commission shall be retained by the commission.

(f) Ownership of or title to any other property, materials, equipment, or supplies obtained or purchased by the interim governing board or the previous governing boards on behalf of an institution is hereby transferred to the board of governors of that institution effective the first day of July, two thousand one.

(g) Each valid agreement and obligation previously transferred or vested in the interim governing board and which was undertaken or agreed to on behalf of an institution or institutions is hereby transferred to the board of governors of the institution or institutions for whose benefit the agreement was entered into or the obligation undertaken, effective the first day of July, two thousand one. The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight [§ 18B-10-8], article ten, chapter eighteen-b and article twelve-b [§§ 18-12B-1 et seq.], chapter eighteen of this code are hereby transferred to the commission and each institution shall transfer to the commission those funds the commission determines are necessary to pay that institution's share of bonded indebtedness. The obligations contained in revenue bonds issued on behalf of a state institution of higher education pursuant to any other section of this code is hereby transferred to the board of governors of the institution on whose behalf the bonds were issued.

(h) All orders, resolutions, policies and rules adopted or promulgated by the respective board of trustees, board of directors, or interim governing board and in effect immediately prior to the first day of July, two thousand one, are hereby transferred to the commission effective the first day of July, two thousand one, and shall continue in effect until rescinded, revised, altered or amended or transferred to the governing boards by the commission as set out in this section and in section six [§ 18B-1-6], article one of this chapter.

(i) The commission may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the commission.

(j) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question, the matter shall be summarized in writing and sent to the commission which shall make a determination regarding such matter within thirty days of receipt thereof.

(k) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six [§§ 18-26-1 et seq., repealed], chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the commission. (1989, c. 64; 2000, c. 100; 2001, c. 110.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, in the section heading, substituted "higher education interim governing board" for "board of trustees and board of directors"; rewrote (a) and (b); in (c), twice substituted "trustees and board of directors" for "regents", substituted "interim governing board" for "governing boards", substituted "apply to the institutions" for "apply to each governing board and to institutions", and added (4); rewrote (d); in (e), deleted "regarding the applicability to one or both of the governing boards" preceding "the matter", substituted "commission which" for "secretary of education and the arts, who"; in (f), substituted "commission" for "secretary of education and the arts" at the end; and made other, minor changes.

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, in the section heading, substituted "policy commission and governing boards" for "interim governing board"; designated former clauses (1) through (4) as subdivisions (1) through (4) in (b), (c) and (d); in (a), substituted "seventeenth day of June, two thousand" for "effective date of this section"; in (a), (b), (c) and (d), inserted "until the first day of July, two thousand one"; in (d), inserted "or the governing boards"; inserted present (e) through (i) and redesignated the remaining subsections accordingly; and made other, minor changes.

Editor's notes. — Concerning the reference in (e) to "the effective date of this section," Acts 2001, c. 110, which amended this section, provided that the act take effect July 1, 2001.

Stated in 4-H Rd. Community Ass'n v. West Va. Univ. Found., Inc., 182 W. Va. 434, 388 S.E.2d 308 (1989).

§ 18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.

(a) All the powers, duties and authorities which the board of governors of West Virginia University, previously established by article eleven [§§ 18-11-1 et seq.] of chapter eighteen of the code or by any other provisions of law, may have had immediately prior to the first day of July, one thousand nine hundred sixty-nine, shall be the powers, duties and authorities of the West Virginia board of regents until the first day of July, one thousand nine hundred eighty-nine. Until such date, all of the policies and affairs of West Virginia University shall be determined, controlled, supervised and managed by the West Virginia board of regents, who shall exercise and perform all such powers, duties and authorities.

All powers, duties and authorities which the West Virginia board of education may have had with respect to state colleges and universities immediately prior to the first day of July, one thousand nine hundred sixty-nine, shall be the powers, duties and authorities of the West Virginia board of regents until the first day of July, one thousand nine hundred eighty-nine. Until such date, all of the policies and affairs of the state colleges and universities shall be determined, controlled, supervised and managed by the West Virginia board of regents, who shall exercise and perform all such powers, duties and authori-

ties: Provided, That the standards for education of teachers and teacher preparation programs at the state colleges and universities shall continue to be under the general direction and control of the West Virginia board of education, and the West Virginia board of education shall have sole authority to continue, as authorized by section six [§ 18-2-6], article two, chapter eighteen of this code, to enter into agreements with county boards of education for the use of the public schools to give prospective teachers teaching experience.

All powers, duties and authorities vested in the state commission on higher education by previous provisions of chapter eighteen of this code or by any other provisions of law shall be the powers, duties and authorities of the West Virginia board of regents until the first day of July, one thousand nine hundred eighty-nine. Until such date, all of the powers, duties, and authorities of the state commission on higher education shall be exercised and performed by the West Virginia board of regents.

(b) The board of regents shall be abolished on the first day of July, one thousand nine hundred eighty-nine. (1989, c. 64.)

Stated in 4-H Rd. Community Ass'n v. West Va. Univ. Found., Inc., 182 W. Va. 434, 388 S.E.2d 308 (1989).

§ 18B-1-5.

Repealed by Acts 2000, c. 100.

Editor's notes. — Former § 18B-1-5 (enacted by Acts 1989, c. 64), pertaining to board of trustees and board of directors under department of education and the arts, was repealed, effective July 1, 2000, by § 18B-1A-8 (enacted by Acts 2000, c. 100, effective June 17, 2000).

§ 18B-1-5a. Pilot program of delivering educational services via distance learning.

(a) The intent of the Legislature in enacting this section is to create the framework for establishing an educational delivery system to address findings that:

(1) The strength of the economy of the state of West Virginia is directly affected by the percentage of the available work force possessing college degrees and/or an advanced vocational-technical education from which an employer may draw;

(2) Real and perceived barriers within West Virginia and its systems of higher education, such as the cost of a college education, the availability of appropriate course work at locations and times convenient for students with families and/or jobs, and inadequate preparation for college-level work, have created road blocks for West Virginians in achieving their educational goals and, in turn, have limited the economic opportunities available to them and the state of West Virginia; and

(3) Because of the state's history of a low college-going rate and a low percentage of state residents who hold college degrees, meeting the current and future work force needs of West Virginia will require attention to the needs

of working-age adults for upgrading their skills, continuing their educations, preparing for new careers and other lifelong learning pursuits, in addition to attending to the educational needs of traditional college age students.

(b) Such a delivery system should employ the best available technology and qualified instructors to provide courses of instruction to students at remote locations by means of electronic transmission and computer assisted instruction. The delivery system should make maximum use of the currently existing resources, facilities, equipment and personnel in the state's systems of public and higher education and other educational and administrative agencies and should be low-tuition, commuter-oriented, open door admissions, serving adults of all ages. The courses of instruction offered through such a system should be relevant to the needs of the target population as expressed in the major findings listed in subsection (a) of this section and should meet the several goals of helping students to prepare for college level work, to increase their likelihood of securing gainful employment given their other relevant life circumstances, to obtain higher education core curriculum course work that is universally accepted at all state institutions of higher education with the grade earned and to minimize the amount of additional course work they will be required to take at less convenient times and locations to achieve their educational goals. The delivery system should also include adequate student support services such as student advising, career counseling, library access and immediate interaction with peers and instructors.

(c) The secretary of education and the arts is responsible for establishing a three-year pilot program consisting of no more than eight sites within the state for the delivery of educational programs consistent with the goals established in this section. To assist in the development of this program, the secretary shall appoint an advisory committee comprised of persons from public education, higher education, the West Virginia distance learning coordinating council, the Legislature and the business community. In consultation with the advisory committee, the secretary shall contract with the appropriate governing board or other body to offer courses or programs of various levels and types to meet the objectives of this section. The contracts shall specify the pilot sites for offering the educational programs, the various technologies for program delivery, the types of courses to be offered, the course instructors and site coordinators and their training, the fees to be charged, the institutions in the state willing to enroll the student participants, the collection of tuition and fees, a method for accounting for the funds collected and expended and other issues relevant to program administration. There is hereby established in the state treasury a special revolving fund within the account of the secretary of education and the arts into which appropriations, course fees, charitable contributions and other moneys received by the secretary for the purposes of the program shall be paid for expenditures in the operation of the pilot program. During each year of the pilot program, the secretary shall report to the governor and the Legislature on the progress of the program, whether it should be continued or discontinued, and, if continued, any recommended modifications in program scope and mission and any action which is necessary on behalf of the governor or the Legislature to improve the success of the

program. At the end of the pilot program, the secretary shall make a final report to the governor and the Legislature as to whether the findings set forth in this section are being addressed through such an educational delivery system and shall recommend whether it should become permanent. If the secretary recommends that the delivery system should become permanent, the secretary shall also recommend specific structures for program support and administration, instructional development and objectives, technology, student support services and other relevant policy issues. (1993, c. 47.)

§ 18B-1-6. Rule making.

(a) Effective the first day of July, two thousand one, the commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code.

(b) The commission shall promulgate a rule to guide the development and approval of rules, guidelines and other policy statements made by the governing boards. The rule promulgated by the commission shall include, but is not limited to, the following provisions:

(1) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected;

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

(3) A procedure to maximize internet access to all proposed and approved rules, guidelines and other policy statements, to the extent technically and financially feasible.

(c) On and after the effective date of this section, and notwithstanding any other provision of this code to the contrary, no rule heretofore required by law to be promulgated as a legislative rule may be considered to be a legislative rule for the purposes of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code, except for the following:

(1) The legislative rule required by subsection (c), section eight [§ 18B-1-8], article one of this chapter;

(2) The legislative rule required by section eight-a [§ 18B-1-8a], article one of this chapter;

(3) The legislative rule required by section two [§ 18B-1A-2], article one-a of this chapter;

(4) The legislative rule required by section four [§ 18B-1B-4], article one-b of this chapter;

(5) The legislative rule required by section one [§ 18C-3-1], article three, chapter eighteen-c of this code;

(6) The legislative rule required by section one [§ 18C-4-1], article four, chapter eighteen-c of this code;

(7) The legislative rule required by section seven [§ 18C-5-7], article five, chapter eighteen-c of this code; and

(8) The legislative rule required by section one [§ 18C-6-1], article six, chapter eighteen-c of this code.

(d) On or after the effective date of this section and before the first day of October, two thousand one, notwithstanding any other provision of this code to the contrary, any rule heretofore promulgated as a legislative rule which was not required specifically by law to be promulgated as a legislative rule, or any rule previously required to be a legislative rule by statute but reclassified by subsection (c) of this section, may be reclassified by the commission either as an interpretive rule or as a procedural rule. The commission shall notify in writing the legislative oversight commission on education accountability of such reclassification and shall file such notice with the office of the secretary of state to be published in the state register.

(e) Nothing in this section may be construed to require that any rule reclassified under this section be promulgated again under the procedures set out in article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a unless the rule is amended or modified.

(f) The commission shall cause a copy of any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article to be filed with the legislative oversight commission on education accountability created in said article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code. (1989, c. 64; 2000, c. 100; 2001, c. 110.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, in the first paragraph substituted "Effective the first day of July, two thousand one, the chancellor for higher education is" for "The university of West Virginia board of trustees and the board of directors of the state college system are", substituted "the education policy commission" for "the secretary of education", and substituted "The chancellor" for "Each governing board"; substituted "may be construed" for "shall be construed" in the second paragraph; and made other, minor changes.

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, rewrote the section.

Editor's notes. — Concerning the references in (c) and (d) to "the effective date of this section," Acts 2001, c. 110, which amended this section and added the language, provided that the act take effect July 1, 2001.

§ 18B-1-7. Supervision by governing boards; delegation to president.

On and after the first day of July, one thousand nine hundred eighty-nine, the governing boards shall determine, control, supervise and manage all of the policies and affairs of the state institutions of higher education under their jurisdiction and shall exercise and perform all such powers, duties and authorities respecting those institutions as were previously exercised and performed by the West Virginia board of regents.

The governing boards have the general determination, control, supervision and management of the financial, business and educational policies and affairs of all state institutions of higher education under their jurisdiction. The board of trustees and the board of directors shall seek the approval of the West Virginia Legislature before either governing board takes action that would result in the creation or closing of a state institution of higher education.

Except as otherwise provided by law, each board's responsibilities shall include, but shall not be limited to, the making of studies and recommendations respecting higher education in West Virginia; allocating among the state

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§§ 18B-1-8,

Repealed by

Editor's notes.
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§ 18B-1-8b.

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institutions of higher education under their jurisdiction specific functions and responsibilities; submitting budget requests for such institutions; and equitably allocating available state appropriated funds between the boards and among such institutions in accordance with the resource allocation model and policies required by section two [§ 18B-5-2], article five of this chapter.

Each board shall delegate, as far as is lawful, efficient and fiscally responsible and within prescribed standards and limitations, such part of its power and control over financial, educational and administrative affairs of each state institution of higher education to the president or other administrative head of those institutions. This shall not be interpreted to include the classification of employees, lawful appeals made by students in accordance with board policy, lawful appeals made by faculty or staff or final review of new or established academic or other programs. (1989, c. 64; 1993, c. 47.)

§§ 18B-1-8, 18B-1-8a.

Repealed by Acts 2000, c. 100.

Editor's notes. — Former §§ 18B-1-8 and 18B-1-8a (enacted by Acts 1989, c. 64 and amended by Acts 1993, c. 47, 1995 c. 99 and 1996, c. 119) concerning the powers and the durites of the governing boards and higher education accountabilities, were repealed, effective June 30, 2001, by § 18B-1A-8 (enacted by Acts 2000, c. 100, effective June 30, 2001).

§ 18B-1-8b. Marshall university graduate college.

(a) Notwithstanding any other provisions of this code to the contrary, the West Virginia graduate college shall cease to be an individual higher education institution, as defined by subsection (h), section two [§ 18B-1-2(h)], article one of this chapter and shall be merged and consolidated with Marshall university, effective the first day of July, one thousand nine hundred ninety-seven.

(b) The graduate programs of Marshall university shall be operated under the same procedures, policies, rules and practices utilized by Marshall university and the board of trustees in operating Marshall university: Provided, That the board of trustees shall assure that the president of Marshall university adopts policies, procedures and standards for its graduate programs that facilitate the multiple missions of the graduate college in serving traditional and nontraditional students and providing graduate instruction throughout the state. Nothing herein shall be interpreted to abrogate the power or responsibility of the board of trustees to approve and review graduate programs offered within the university system, nor to limit the statewide mission of West Virginia university or any other institution.

(c) The president of Marshall university shall appoint the head of the graduate college, who shall report directly to the president of Marshall university.

(d) Nothing contained herein shall be interpreted to authorize the provision or expansion of any four-year programs offered by Marshall university to any sites formerly offering graduate school courses by the West Virginia graduate college.

(e) It is the intent of the Legislature that the program review and approval process for campus offerings for graduate education by the graduate college of Marshall university be separate and distinct from the process for the approval of undergraduate education program offerings.

(f) It is the Legislature's intent that, through the fiscal year two thousand two thousand one, the proportionate share of the funds which would have been generated by the board of trustees resource allocation policy for the West Virginia graduate college shall be allocated to the Marshall university graduate college. It is further the intent of the Legislature that the merger and consolidation of West Virginia graduate college and Marshall university shall not result in any financial gain or loss to the board of trustees or any institution within the university system in the appropriation decisions by the Legislature.

(g) It is the intent of the Legislature that Marshall university and the Marshall university graduate college each receive any increase in state appropriated funds for the fiscal year beginning the first day of July, one thousand nine hundred ninety-seven, set out in section one-c [§ 18B-1-1c], article one of this chapter, and further, that they shall not be denied any increases because of the need for changes in their strategic plans necessitated by the merger and consolidation of the two institutions: Provided, That Marshall university shall prepare a revised strategic plan and submit it to the board of trustees for approval by the first day of November, one thousand nine hundred ninety-seven.

(h) Each valid agreement, obligation or claim entered into or incurred by the board of trustees on behalf of the West Virginia graduate college is hereby undertaken by the board of trustees on behalf of Marshall university. (1996, c. 119; 1997, c. 85.)

§ 18B-1-9. Powers and duties of institutional presidents.

Except as is otherwise provided by law or rule, the president or other administrative head of each state institution of higher education shall exercise all the duties and powers conferred by law in the government of the institution under such person's management and control and, subject to review by the appropriate governing board, shall have the authority and responsibility for overseeing the routine matters of the institution, which include, but are not limited to, travel approval, sabbaticals, budget oversight and special student fees. The president or other administrative head shall assist the chancellors in developing or evaluating policy options for the governing boards, but not both developing and evaluating for the same policy, and may propose policy options for consideration by their governing board. The president or other administrative head of each state institution of higher education shall also be responsible for seeking community advice on academic or other programs. (1989, c. 64.)

§ 18B-1-10.

Repealed by Acts 1993, c. 47.

Editor's notes. — Former § 18B-1-10 (enacted by Acts 1989, c. 64) concerning the task force on faculty salaries and resource allocation, was repealed by Acts 1993, c. 47.

§ 18B-1-11. Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.

Each state funded institution of higher education accepting students with handicapping conditions, such as physical, learning, or severe sensory disabilities, shall provide services in accordance with Rehabilitation Act 504 appropriate to meet the educational needs of these students. Such information shall be provided to local boards of education for information dissemination to students and parents to fulfill the goals of transition. (1990, 1st Ex. Sess., c. 2.)

Editor's notes. — Rehabilitation Act 504 is part of the Rehabilitation Act of 1973, which is codified generally at 29 USCS §§ 701 et seq.

ARTICLE 1A.

COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

Sec.
18B-1A-1. Purpose of article; legislative findings and intent.
18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.
18B-1A-3. Peer institutions.
18B-1A-4. Legislative financing goals.
18B-1A-5. Financing; institutional operating budgets, additional funding.
18B-1A-6. Graduate education.
18B-1A-7. Contrary provisions.
18B-1A-8. Sections repealed.

Effective dates. — Acts 2000, c. 100, provided that the act take effect June 17, 2000.

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§ 18B-1A-1. Purpose of article; legislative findings and intent.

Purpose. — The purpose of this article is to establish a compact with higher education for the future of West Virginia. The Legislature recognizes both the progress achieved thus far through the higher education strategic planning process established pursuant to section one-c [§ 18B-1-1c], article one of this chapter, and the shortfalls. West Virginia long has recognized the value of education and, on a per capita income basis, invests more to support education than most other states. Based on its findings, the Legislature recognizes that because of a combination of state and national demographic and economic factors and emerging changes in higher education delivery systems, it is in the best interests of both the state and the state's higher education system to begin

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CHAPTER 18B.
HIGHER EDUCATION.

Article

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1A. **Compact With Higher Education for the Future of West Virginia.**
1B. **Higher Education Policy Commission.**
2A. **Institutional Boards of Governors.**
2B. **West Virginia Council for Community and Technical College Education.**
2C. **West Virginia Community and Technical College.**
3C. **Community and Technical College System.**
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5. **Higher Education Budgets and Expenditures.**
6. **Advisory Councils and Boards.**
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9. **Classified Employee Salary Schedule and Classification System.**
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ARTICLE 1.
GOVERNANCE.

Sec.		Sec.	
18B-1-1a.	Goals for post-secondary education.	18B-1-8.	Student rights when institutions merge or become administratively linked.
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18B-1-6.	Rulemaking.		

§ 18B-1-1a. Goals for post-secondary education.

(a) *Findings.* — The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable within the fiscal constraints of the state and

for the state's residents to participate and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

(1) West Virginia leads a national trend toward an aging population wherein a declining percentage of working-age adults will be expected to support a growing percentage of retirees. Public school enrollments statewide have declined and will continue to do so for the foreseeable future with a few notable exceptions in growing areas of the state. As the state works to expand and diversify its economy, it is vitally important that young people entering the workforce from our education systems have the knowledge and skills to succeed in the economy of the twenty-first century. It is equally important, however, that working-age adults who are the large majority of the current and potential workforce also possess the requisite knowledge and skills and the ability to continue learning throughout their lifetimes. The reality for West Virginia is that its future rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

(2) Post-secondary education is changing throughout the nation. Place-bound adults, employers and communities are demanding education and student services that are accessible at any time, at any place and at any pace. Institutions are seizing the opportunity to provide academic content and support services on a global scale by designing new courseware, increasing information technology-based delivery, increasing access to library and other information resources and developing new methods to assess student competency rather than "seat time" as the basis for recognizing learning, allocating resources and ensuring accountability. In this changing environment, the state must take into account the continuing decline in the public school-age population, the limits of its fiscal resources and the imperative need to serve the educational needs of working-age adults. West Virginia cannot afford to finance quality higher education systems that aspire to offer a full array of programs while competing among themselves for a dwindling pool of traditional applicants. The competitive position of the state and its institutions will depend fundamentally on its capacity to reinforce the quality and differentiation of its institutions through policies that encourage focus and collaboration.

(3) The accountability system in West Virginia must be well equipped to address cross-cutting issues such as regional economic and workforce development, community and technical college services, collaboration with the public schools to improve quality and student participation rates, access to graduate education and other broad issues of state interest. Severe fiscal constraints require West Virginia to make maximum use of existing assets to meet new demands. New investments must be targeted to those initiatives designed to enhance and reorient existing capacity, provide incentives for collaboration and focus on the new demands. It must have a single accountability point for developing, building consensus around and sustaining attention to the public policy agenda and for allocating resources consistent with this policy agenda.

(4) The state should make the best use of the expertise that private institutions of higher education can offer and recognize the importance of their contributions to the economic, social and cultural well-being of their communities.

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(5) The system of public higher education should be open and accessible to all persons, including persons with disabilities and other persons with special needs.

(b) *Compact with higher education.* — In pursuance of these findings, it is the intent of the Legislature to engage higher education in a statewide compact for the future of West Virginia, as provided in article one-a [§§ 18B-1A-1 et seq.] of this chapter, that focuses on a public policy agenda that includes, but is not limited to, the following:

(1) Diversifying and expanding the economy of the state;

(2) Increasing the competitiveness of the state's workforce and the availability of professional expertise by increasing the number of college degrees produced to the level of the national average and significantly improving the level of adult functional literacy; and

(3) Creating a system of higher education that is equipped to succeed at producing these results.

(c) *Elements of the compact with higher education.* — It is the intent of the Legislature that the compact with higher education include the following elements:

(1) A step-by-step process, as provided in articles one-b [§§ 18B-1B-1 et seq.] and three-c [§§ 18B-3C-1 et seq.] of this chapter, which will enable the state to achieve its public policy agenda through a system of higher education equipped to assist in producing the needed results. This process includes, but is not limited to, separate institutional compacts with state institutions of higher education that describe changes in institutional missions in the areas of research, graduate education, admission standards, community and technical college education and geographical areas of responsibility to accomplish the following:

(A) A capacity within higher education to conduct research to enhance West Virginia in the eyes of the larger economic and educational community and to provide a basis for West Virginia's improved capacity to compete in the new economy through research oriented to state needs;

(B) Access to stable and continuing graduate-level programs in every region of the state, particularly in teacher education related to teaching within a subject area to improve teacher quality;

(C) Universities, colleges and community and technical colleges that have focused missions, individual points of distinction and quality and strong links with the educational, economic and social revitalization of their regions and the state of West Virginia;

(D) Greater access and capacity to deliver technical education, workforce development and other higher education services to place-bound adults, thus improving the general levels of post-secondary educational attainment and literacy;

(E) Independently accredited community and technical colleges in every region of the state that:

(i) Assess regional needs;

(ii) Ensure access to comprehensive community and technical college and workforce development services within each of their respective regions;

(iii) Convene and serve as a catalyst for local action in collaboration with regional leaders, employers and other educational institutions;

(iv) Provide and, as necessary, broker educational services;

(v) Provide necessary student services;

(vi) Fulfill such other aspects of the community and technical college mission and general provisions for community and technical colleges as provided for in article three-c [§§ 18B-3C-1 et seq.] of this chapter; and

(vii) Maximize use of existing infrastructure and resources within their regions to increase access, including, but not limited to, vocational technical centers, schools, libraries, industrial parks and work sites.

(2) Providing additional resources, subject to availability and appropriation by the Legislature as provided in article one-a [§§ 18B-1A-1 et seq.] of this chapter, to make the state institutions of higher education more competitive with their peers, to assist them in accomplishing the elements of the public policy agenda and to ensure the continuity of academic programs and services to students.

(3) Establishing a process for the allocation of additional resources which focuses on achieving the elements of the public policy agenda and streamlines accountability for the step-by-step progress toward achieving these elements within a reasonable time frame as provided in article one-a [§§ 18B-1A-1 et seq.] of this chapter.

(4) Providing additional flexibility to the state institutions of higher education by making permanent the exceptions granted to higher education relating to travel rules and vehicles pursuant to sections forty-eight through fifty-three [§§ 5A-3-48 through 5A-3-53], inclusive, article three, chapter five-a of this code and section eleven [§§ 12-3-11], article three, chapter twelve of this code.

(5) Revising the higher education governance structure to make it more responsive to state and regional needs.

(d) *General goals for post-secondary education.* — In pursuance of the findings and the development of institutional compacts with higher education for the future of West Virginia pursuant to article one-a [§§ 18B-1A-1 et seq.] of this chapter, it is the intent of the Legislature to establish general goals for post-secondary education and to have the commission and council report the progress toward achieving these goals in the higher education report card required pursuant to section eight [§ 18B-1B-8], article one-b of this chapter and, where applicable, have the goals made a part of the institutional compacts. The Legislature establishes the general goals as follows:

(1) The overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to encourage citizens of all ages to increase their knowledge and skills. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education to:

(i) Improve the quality of public education, particularly with respect to ensuring that the needs of public schools for teachers and administrators are met;

(ii) Inform public school students, their parents and teachers of the academic preparation that students need to be prepared adequately to succeed in

their selected fields of study and career plans, including academic career fairs; and

(iii) Improve instructional programs in the public schools so that the students enrolling in post-secondary education are adequately prepared;

(B) Collaboration, coordination and interaction among public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote the effective and efficient utilization of workforce investment and other funds to:

(i) Provide to individuals and employers greatly improved access to information and services on education and training programs, financial assistance, labor markets and job placement;

(ii) Increase awareness among the state's citizens of the opportunities available to them to improve their basic literacy, workforce and post-secondary skills and credentials; and

(iii) Improve citizens' motivation to take advantage of available opportunities by making the system more seamless and user friendly;

(C) Collaboration, coordination and interaction between public and post-secondary education on the development of seamless curriculum in technical preparation programs of study between the secondary and post-secondary levels; and

(D) Opportunities for advanced high school students to obtain college credit prior to high school graduation.

(2) The number of degrees produced per capita by West Virginia institutions of higher education is at the national average. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote to individuals of all ages the benefits of increased post-secondary educational attainment;

(B) Assistance in overcoming the financial barriers to post-secondary education for both traditional and nontraditional students;

(C) An environment within post-secondary education that is student-friendly and that encourages and assists students in the completion of degree requirements within a reasonable time frame. The environment also should expand participation for the increasingly diverse student population;

(D) A spirit of entrepreneurship and flexibility within post-secondary education that is responsive to the needs of the current workforce and other nontraditional students for upgrading and retraining college-level skills; and

(E) The expanded use of technology for instructional delivery and distance learning.

(3) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed, have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which:

(A) Are relevant and affordable;

(B) Allow them to gain transferrable credits and associate or higher level degrees;

(C) Provide quality technical education and skill training; and

(D) Are responsive to business, industry, labor and community needs.

(4) State institutions of higher education prepare students to practice good citizenship and to compete in a global economy in which good jobs require an advanced level of education and skill which far surpasses former requirements. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The development of entrepreneurial skills through programs such as the rural entrepreneurship through action learning (REAL) program, which include practical experience in market analysis, business plan development and operations;

(B) Elements of citizenship development are included across the curriculum in core areas, including practical applications such as community service, civic involvement and participation in charitable organizations and in the many opportunities for the responsible exercise of citizenship that higher education institutions provide;

(C) Students are provided opportunities for internships, externships, work study and other methods to increase their knowledge and skills through practical application in a work environment;

(D) College graduates meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(E) College graduates meet or exceed national and international standards for performance in their fields through national accreditation of programs and through outcomes assessment of graduates; and

(F) Admission and exit standards for students, professional staff development, program assessment and evaluation and other incentives are used to improve teaching and learning.

(5) State institutions of higher education exceed peer institutions in other states in measures of institutional productivity and administrative efficiency. Efforts in pursuit of this goal include, but are not limited to:

(A) The establishment of systematic ongoing mechanisms for each state institution of higher education to set goals, to measure the extent to which those goals are met and to use the results of quantitative evaluation processes to improve institutional effectiveness;

(B) The combination and use of resources, technology and faculty to their maximum potential in a way that makes West Virginia higher education more productive than its peer institutions in other states while maintaining educational quality; and

(C) The use of systemic program review to determine how much duplication is necessary to maintain geographic access and to eliminate unnecessary duplication.

(6) Post-secondary education enhances state efforts to diversify and expand the economy of the state. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The focus of resources on programs and courses which offer the greatest opportunities for students and the greatest opportunity for job creation and retention in the state;

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(B) The focus of resources on programs supportive of West Virginia employment opportunities and the emerging high-technology industries;

(C) Closer linkages among higher education and business, labor, government and community and economic development organizations; and

(D) Clarification of institutional missions and shifting of resources to programs which meet the current and future workforce needs of the state.

(7) Faculty and administrators are compensated at a level competitive with peer institutions to attract and keep quality personnel at state institutions of higher education.

(8) The tuition and fee levels for in-state students are competitive with those of peer institutions and the tuition and fee levels for out-of-state students are set at a level which at least covers the full cost of instruction. (1993, c. 47; 1995, c. 99; 2000, c. 100; 2001, c. 110; 2004, c. 92.)

Code of State Rules References. — Higher education report card, 128 CSR 16, effective June 9, 1996.

Higher education report card, 131 CSR 16, effective April 17, 1996.

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, substituted "workforce" for "work force" throughout; rewrote the first sentence in (a)(3); inserted "community and technical colleges" and substituted "individual" for "their own" in (c)(1)(C); deleted "to the extent possible" following "every region of the state" in (c)(1)(E); substituted "Maximize use" for "make maximum use" in (c)(1)(E)(vii); inserted "have the goals" preceding "made a part" in (d); substituted "are" for "is" in (d)(1)(A)(i); inserted "including academic career fairs" in (d)(1)(A)(ii); in (d)(1)(B), substituted "among" for "between"; rewrote (d)(1)(B)(i); redesignated (d)(3)(i) through (d)(3)(iv) as (d)(3)(A) through (d)(3)(D); and made minor stylistic changes.

§ 18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.

Code of State Rules References. — Preparation of students for college, 128 CSR 51, effective August 31, 1997.

Preparation of students for college, 131 CSR 51, effective July 30, 1997.

§ 18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c [§§ 18C-1-1 et seq.] of this code have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) Effective the first day of July, two thousand five, "regional campus" means West Virginia university at Parkersburg and West Virginia university institute of technology.

(b) "Governing boards" or "boards" means the institutional boards of governors created pursuant to section one [§ 18B-2A-1], article two-a of this chapter;

(c) "Freestanding community and technical colleges" means southern West Virginia community and technical college, West Virginia northern community and technical college and eastern West Virginia community and technical college which may not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community college" or "community colleges" means community and technical college or colleges as those terms are defined in this section;

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes southern West Virginia community and technical college, West Virginia northern community and technical college, eastern West Virginia community and technical college, New River community and technical college, West Virginia university at Parkersburg, the community and technical college at West Virginia university institute of technology, the community and technical college of Shepherd, Fairmont state community and technical college, Marshall community and technical college and West Virginia state community and technical college;

(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in article three-c [§§ 18B-3C-1 et seq.] of this chapter;

(g) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three [§ 18B-3C-3], article three-c of this chapter;

(h) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Higher education policy commission", "policy commission" or "commission" means the commission created pursuant to section one [§ 18B-1B-1], article one-b of this chapter;

(j) "Chancellor for higher education" means the chief executive officer of the higher education policy commission employed pursuant to section five [§ 18B-1B-5], article one-b of this chapter;

(k) "Chancellor for community and technical college education" means the chief executive officer of the West Virginia council for community and technical college education employed pursuant to section three [§ 18B-2B-3], article two-b of this chapter;

(*l*) "Chancellor" means the chancellor for higher education where the context refers to a function of the higher education policy commission. "Chancellor" means chancellor for community and technical college education where the context refers to a function of the West Virginia council for community and technical college education;

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

(n) "Community and technical college education program" means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets;

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developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All such programs are under the jurisdiction of the council. Any reference to "post-secondary vocational education programs" means community and technical college education programs as defined in this subsection;

(o) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(p) For the purposes of this chapter and chapter eighteen-c [§§ 18C-1-1 et seq.] of this code, "senior administrator" means the vice chancellor for administration employed by the commission with the advice and consent of the council in accordance with section two [§ 18B-4-2], article four of this chapter;

(q) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;

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

(s) Until the first day of July, two thousand five, "regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university and West Virginia university institute of technology;

(t) The advisory board previously appointed for the West Virginia graduate college is known as the "board of visitors" and shall provide guidance to the Marshall university graduate college;

(u) "Institutional compact" means the compact between the commission or council and a state institution of higher education under its jurisdiction, as described in section two [§ 18B-1A-2], article one-a of this chapter;

(v) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three [§ 18B-1A-3], article one-a of this chapter;

(w) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight [§ 18B-3C-8], article three-c of this chapter;

(x) "Sponsoring institution" means a state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight [§ 18B-3C-8], article three-c of this chapter;

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

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

(aa) "Council" means the West Virginia council for community and technical college education created pursuant to article two-b [§§ 18B-2B-1 et seq.] of this chapter. (1989, c. 64; 1992, c. 61; 1993, c. 47; 1995, c. 99; 1996, c. 119; 1997, c. 85; 2000, c. 100; 2003, c. 96; 2004, c. 92.)

Effect of amendment of 2003. — Acts 2003, c. 96, effective March 8, 2003, rewrote (a); deleted "Beginning on the first day of July, two thousand one" from the beginning of (b); inserted " 'policy commission' " in (i); deleted the last sentence of (q), which read: "Each regional campus shall adopt separate strategic plans required by section one-c of this article"; and made minor stylistic changes.

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, in (c), inserted "and" preceding "eastern West Virginia" and substituted "may not" for "shall not"; rewrote (e); substituted "Chancellor for higher education" for "Chancellor" in (j); added (k) through (*l*) and redesignated the remaining subsections accordingly; rewrote (n); deleted "The vice chancellor for administration shall assume all the powers and duties that are assigned by law to the senior administrator" from the end of (p); deleted "direct or indirect" preceding "jurisdiction" in (r); added "Until the first day of July, two thousand five" in (s); rewrote (u); in (z), deleted "the act of" preceding "'brokering'" and substituted "at that institution" for "by a sponsoring institution"; rewrote (aa); and made minor stylistic changes.

Editor's notes. — Former article 18B-3A, §§ 18B-3A-1 through 18B-3A-5 (enacted by Acts 2000, c. 100), referred to in (y), concerning the West Virginia Joint Commission for Vocational-Technical-Occupational Education, was repealed by Acts 2001, c. 110, effective July 1, 2001.

§ 18B-1-3. Transfer of powers, duties, property, obligations, etc.

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen [§§ 18-1-1 et seq.] of this code and transferred to the board of trustees and board of directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of trustees and board of directors, to the extent they are in effect on the seventeenth day of June, two thousand, are hereby transferred to the interim governing board created in article one-c [§§ 18B-1C-1 et seq.] of this chapter and shall be exercised and performed by the interim governing board until the first day of July, two thousand one, as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of trustees and the board of directors and property vested in either of the boards separately, formerly existing under the provisions of this chapter, are hereby transferred to the interim governing board created in article one-c [§§ 18B-1C-1 et seq.] of this chapter until the first day of July, two thousand one. Property transferred to or vested in the board of trustees and board of directors shall include:

(1) All property vested in the board of governors of West Virginia university and transferred to and vested in the West Virginia board of regents;

(2) All property acquired in the name of the state board of control or the West Virginia board of education and used by or for the state colleges and universities and transferred to and vested in the West Virginia board of regents;

(3) All property acquired in the name of the state commission on higher education and transferred to and vested in the West Virginia board of regents; and

(4) All property acquired in the name of the board of regents and transferred to and vested in the respective board of trustees and board of directors.

(c) Each valid agreement and obligation previously transferred to or vested in the board of trustees and board of directors formerly existing under the provisions of this chapter is her until the first day of July, t obligations may apply to the i ments and obligations transi directors shall include:

(1) Each valid agreement an Virginia university transferred the West Virginia board of rege

(2) Each valid agreement an respect to the state colleges a agreement and obligation of th

(3) Each valid agreement an education transferred to and de Virginia board of regents; and

(4) Each valid agreement an to and deemed the agreement a and board of directors.

(d) All orders, resolutions an tive board of trustees and boar the first day of July, two tho governing board until the fir continue in effect and shall be interim governing board until commission or the governing b rized and permitted by law. Su

(1) Those adopted or promul university and in effect immedi nine hundred sixty-nine, unl amended by the board of regen and permitted by law;

(2) Those respecting state co by the West Virginia board of e first day of July, one thousan rescinded, revised, altered or a and to the extent authorized a

(3) Those adopted or prom education and in effect immedi nine hundred sixty-nine, unl amended by the board of regen and permitted by law; and

(4) Those adopted or promul day of July, one thousand nin scinded, revised, altered or an board of directors in the manne law.

(e) Title to all real property t board pursuant to this secti

provisions of this chapter is hereby transferred to the interim governing board until the first day of July, two thousand one, as those agreements and obligations may apply to the institutions under its jurisdiction. Valid agreements and obligations transferred to the board of trustees and board of directors shall include:

(1) Each valid agreement and obligation of the board of governors of West Virginia university transferred to and deemed the agreement and obligation of the West Virginia board of regents;

(2) Each valid agreement and obligation of the state board of education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia board of regents;

(3) Each valid agreement and obligation of the state commission on higher education transferred to and deemed the agreement and obligation of the West Virginia board of regents; and

(4) Each valid agreement and obligation of the board of regents transferred to and deemed the agreement and obligation of the respective board of trustees and board of directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective board of trustees and board of directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the interim governing board until the first day of July, two thousand one, and shall continue in effect and shall be deemed the orders, resolutions and rules of the interim governing board until rescinded, revised, altered or amended by the commission or the governing boards in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include:

(1) Those adopted or promulgated by the board of governors of West Virginia university and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law;

(2) Those respecting state colleges and universities adopted or promulgated by the West Virginia board of education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law;

(3) Those adopted or promulgated by the state commission on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and

(4) Those adopted or promulgated by the board of regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until rescinded, revised, altered or amended by the respective board of trustees or board of directors in the manner and to the extent authorized and permitted by law.

(e) Title to all real property transferred to or vested in the interim governing board pursuant to this section of the code is hereby transferred to the

commission effective the first day of July, two thousand one. The board of governors for each institution may request that the commission transfer title to the board of governors of any real property specifically identifiable with that institution or the commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property.

The title to any real property that is jointly utilized by institutions or for statewide programs under the jurisdiction of the commission shall be retained by the commission.

(f) Ownership of or title to any other property, materials, equipment or supplies obtained or purchased by the interim governing board or the previous governing boards on behalf of an institution is hereby transferred to the board of governors of that institution effective the first day of July, two thousand one.

(g) Each valid agreement and obligation previously transferred or vested in the interim governing board and which was undertaken or agreed to on behalf of an institution or institutions is hereby transferred to the board of governors of the institution or institutions for whose benefit the agreement was entered into or the obligation undertaken effective the first day of July, two thousand one.

(1) The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight [§ 18B-10-8], article ten of this chapter and article twelve-b [§§ 18-12B-1 et seq.], chapter eighteen of this code are hereby transferred to the commission and each institution shall transfer to the commission those funds the commission determines are necessary to pay that institution's share of bonded indebtedness.

(2) The obligations contained in revenue bonds issued on behalf of a state institution of higher education pursuant to any other section of this code is hereby transferred to the board of governors of the institution on whose behalf the bonds were issued.

(h) All orders, resolutions, policies and rules:

(1) Adopted or promulgated by the respective board of trustees, board of directors or interim governing board and in effect immediately prior to the first day of July, two thousand one, are hereby transferred to the commission effective the first day of July, two thousand one, and continue in effect until rescinded, revised, altered, amended or transferred to the governing boards by the commission as provided in this section and in section six [§ 18B-1-6] of this article.

(2) Adopted or promulgated by the commission relating solely to community and technical colleges or community and technical college education, or rules which the council finds necessary for the exercise of its lawful powers and duties pursuant to the provisions of this chapter, may be adopted by the council and continue in effect until rescinded, revised, altered, amended or transferred to the governing boards under the jurisdiction of the council pursuant to section six [§ 18B-1-6] of this article. Nothing in this section requires the initial rules of the commission that are adopted by the council to be promulgated again under the procedure set forth in article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended.

(3) Adopted or promulgated b
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(B) That portion of the rule r
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six [§ 18B-1-6] of this article.

(i) The commission may, in
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six [§ 18B-1-6] of this article.

The council may, in its sol
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transferred pursuant to rules
[§ 18B-1-6] of this article.

(j) As to any title, agreement
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receipt thereof.

(k) Rules or provisions of la
were repealed, rendered inop
section shall remain in full
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Effect of amendment of 2004. 2004, c. 92, effective March 13, 2004, d prior governing boards to the higher policy commission and governing boa the end of the section heading; in (nated the second and third sentence and (g)(2) respectively; redesigna

(3) Adopted or promulgated by the commission relating to multiple types of public institutions of higher education or community and technical college education as well as baccalaureate and post-baccalaureate education are transferred to the council in part as follows:

(A) That portion of the rule relating solely to community and technical colleges or community and technical college education is transferred to the council and continues in effect until rescinded, revised, altered, amended or transferred to the governing boards by the council as provided in this section and in section six [§ 18B-1-6] of this article;

(B) That portion of the rule relating to institutions or education other than community and technical colleges is retained by the commission and continues in effect until rescinded, revised, altered, amended or transferred to the governing boards by the commission as provided in this section and in section six [§ 18B-1-6] of this article.

(i) The commission may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the commission pursuant to section six [§ 18B-1-6] of this article.

The council may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the council pursuant to section six [§ 18B-1-6] of this article.

(j) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question, the matter shall be summarized in writing and sent to the commission which shall make a determination regarding such matter within thirty days of receipt thereof.

(k) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six [§§ 18-26-1 et seq.], chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the commission. (1989, c. 64; 2000, c. 100; 2001, c. 110; 2004, c. 92.)

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, deleted "of prior governing boards to the higher education policy commission and governing boards" from the end of the section heading; in (g), redesignated the second and third sentences as (g)(1) and (g)(2) respectively; redesignated text within (h) as (h)(1); deleted "shall" preceding "continue" in (h)(1); added (h)(2) through (h)(3); in (i), inserted "of the institutions under its jurisdiction" and added "pursuant to section six of this article"; added the second paragraph in (i); and made minor stylistic changes.

§ 18B-1-6. Rulemaking.

(a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code, subject to the provisions of section three [§ 18B-1-3] of this article.

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

(c) The commission and council each shall promulgate a rule to guide the development and approval of rules, guidelines and other policy statements made by their respective governing boards. The rules promulgated by the commission and council shall include, but are not limited to, the following provisions:

(1) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected;

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

(3) A procedure to maximize internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible.

(d) On and after the effective date of this section, and notwithstanding any other provision of this code to the contrary, any rule heretofore required by law to be promulgated as a legislative rule prior to the first day of July, two thousand one, may not be considered to be a legislative rule for the purposes of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code except for the following:

(1) The legislative rule required by subsection (c), section eight [§ 18B-1-8] of this article;

(2) The legislative rule required by section eight-a [§ 18B-1-8a] of this article;

(3) The legislative rule required by section two [§ 18B-1A-2], article one-a of this chapter;

(4) The legislative rule required by section four [§ 18B-1B-4], article one-b of this chapter;

(5) The legislative rule required by section one [§ 18C-3-1], article three, chapter eighteen-c of this code;

(6) The legislative rule required by section one [§ 18C-4-1], article four, chapter eighteen-c of this code;

(7) The legislative rule required by section seven [§ 18C-5-7], article five, chapter eighteen-c of this code; and

(8) The legislative rule required by section one [§ 18C-6-1], article six, chapter eighteen-c of this code.

(e) Nothing in this sectio
under this section be promu
three-a [§§ 29A-3A-1 et seq.
is amended or modified.

(f) The commission and c
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Code of State Rules Refere
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Capital project management, 13
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Classified employees, 128 CSR
October 28, 1996.
Classified employees, 131 CSR
September 5, 1996.
Continuing education unit
128 CSR 32, effective October 22,
Equal opportunity and affirm
128 CSR 45, effective April 8, 19
Equal opportunity and affirm
131 CSR 45, effective April 3, 19

§ 18B-1-7. Supervisi
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Code of State Rules Referen
tal project management, 131 CSR
February 16, 1998.

§ 18B-1-8. Student r
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(a) Commencing with the
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(e) Nothing in this section requires that any rule reclassified or transferred under this section be promulgated again under the procedures set out in article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code unless the rule is amended or modified.

(f) The commission and council each shall file with the legislative oversight commission on education accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article. (1989, c. 64; 2000, c. 100; 2001, c. 110; 2004, c. 92.)

Code of State Rules References. — Academic freedom and responsibility, appointment, promotion, tenure, and nonreappointment or dismissal of faculty, and grievance procedure for other matters relating to faculty, 128 CSR 36, effective October 10, 1997.

Academic freedom and responsibility, appointment, promotion, tenure, and nonreappointment or dismissal of faculty, and grievance procedure for other matters relating to faculty, 131 CSR 36, effective July 30, 1997.

Academic freedom, professional responsibility, promotion and tenure, 133 CSR 9, effective December 25, 2001.

Assessment, payment and refund of fees, 128 CSR 22, effective May 5, 1994.

Capital project management, 128 CSR 54, effective February 11, 2000.

Capital project management, 131 CSR 54, effective February 16, 1998.

Capital project management, 133 CSR 12, effective December 25, 2001.

Classified employees, 128 CSR 31, effective October 28, 1996.

Classified employees, 131 CSR 31, effective September 5, 1996.

Continuing education unit (C.E.U.), 128 CSR 32, effective October 22, 1982.

Equal opportunity and affirmative action, 128 CSR 45, effective April 8, 1992.

Equal opportunity and affirmative action, 131 CSR 45, effective April 3, 1992.

Ethics, 128 CSR 43, effective May 29, 1992.

Ethics, 131 CSR 43, effective August 9, 1992.

Personnel administration, 128 CSR 62, effective May 5, 1994.

Personnel administration, 131 CSR 62, effective March 28, 1994.

Personnel administration, 133 CSR 8, effective November 22, 2001.

Policy regarding program review, 133 CSR 10, effective December 25, 2001.

Standards and procedures for undergraduate institutional admissions policies, 128 CSR 44, effective February 11, 2000.

Submission of proposals for new academic programs and the discontinuance of existing programs, 133 CSR 11, effective December 25, 2001.

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, substituted "Rulemaking" for "Rule-making" in the section heading; in (a), deleted "Effective the first day of July, two thousand one" from the beginning and substituted "section three of this article" for "article three-a, chapter twenty-nine-a of this code"; rewrote (b); added (c) and redesignated the remaining sections accordingly; substituted "any rule . . . may not" for "no rule . . . may" in (d); substituted "of this article" for "article one of this chapter" in (d)(1) through (d)(2); deleted the former (d) pertaining to reclassification of prior legislative rules as interpretive rules or procedural rules; and rewrote (f).

§ 18B-1-7. Supervision by governing boards; delegation to president.

Code of State Rules References. — Capital project management, 131 CSR 54, effective February 16, 1998.

§ 18B-1-8. Student rights when institutions merge or become administratively linked.

(a) Commencing with the effective date of this section, when a conflict exists between academic program requirements at an institution to be consolidated, merged or administratively linked to another state institution of higher education, the requirements of the institution at which the student initially

enrolled prevail. A student may not be required to earn additional credits toward the degree pursued, or to take additional courses, that were not included in the program of study at the time the student declared that major at the enrolling institution.

(b) A student enrolled in an institution to be consolidated, merged or administratively linked to another state institution of higher education shall continue to receive any state-funded student financial aid for which he or she would otherwise be eligible. (2003, c. 96.)

Editor's notes. — Concerning the reference in (a) to "the effective date of this section," Acts 2003, c. 96, which enacted this section and provided the language, became effective March 8, 2003.

Former § 18B-1-8 (enacted by Acts 1989, c. 64, and amended by Acts 1993, c. 47 and 1995, c. 99), concerning the powers and duties of governing boards generally, was repealed effective June 30, 2001, pursuant to the the provisions of § 18B-1A-8.

Effective dates. — Acts 2003, c. 96, provided that the act take effect March 8, 2003.

§ 18B-1-10. Potomac branch of West Virginia university.

(a) Notwithstanding any other provision of this code to the contrary, by the first day of July, two thousand five, Potomac state college shall merge and consolidate with West Virginia university, and become a fully integrated division of the university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to West Virginia university. The advisory board previously appointed for Potomac state college shall be known as the board of visitors and shall provide guidance to the division in carrying out its mission.

(b) Operational costs for the Potomac campus may not exceed by more than ten percent the average cost per full-time equivalent student for freestanding community and technical colleges or the southern regional education board average expenditures for two-year institutions. West Virginia university shall reduce these costs to the mandated level within four years.

(c) Auxiliary enterprises shall be incorporated into the West Virginia university auxiliary enterprise system. The West Virginia university board of governors shall determine if operations at the Potomac campus can be operated on a self-sufficient basis when establishing rates for auxiliary services and products.

(d) Potomac state college has a strong reputation in agriculture and forestry instruction, pre-professional programs in business, computer science and education, and basic liberal arts instruction. These programs shall be further cultivated and emphasized as the sustaining mission of the Potomac campus over the next decade, except that the higher education policy commission may change the mission of the Potomac campus at any time the commission determines appropriate. In order to focus its resources on these programs, the campus shall contract through eastern West Virginia community and technical college to provide work force development training, literacy education and technical education programs which are most efficiently offered within a flexible community and technical college curriculum. This collaborative relationship shall serve to strengthen both institutions and generate a model

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(e) Beginning the firs
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shall report to the legisl
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Editor's notes. — Former
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COMPACT WITH TU

Sec.
18B-1A-2. Institutional
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18B-1A-4. Legislative final

§ 18B-1A-2. Institu of high proces

(a) Each state college
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contain the following:
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relationship between traditional and community and technical college education for institutions throughout the state.

(e) Beginning the first day of November, two thousand three, and annually thereafter, Potomac state college and eastern West Virginia community and technical college shall report to the higher education policy commission on plans, accomplishments and recommendations in implementing the cooperative relationship authorized in subsection (d) of this section. The commission shall report to the legislative oversight commission on education accountability on the cooperative activities, results and recommendations for changes by the fifteenth day of December, two thousand three, and annually thereafter. (2003, c. 96.)

Editor's notes. — Former § 18B-1-10 (enacted by Acts 1989, c. 64) concerning the task force on faculty salaries and resource allocation, was repealed by Acts 1993, c. 47.

Effective dates. — Acts 2003, c. 96, provided that the act take effect March 8, 2003.

ARTICLE 1A.

COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

Sec.		Sec.	
18B-1A-2.	Institutional compacts with state institutions of higher education; establishment and review process.	18B-1A-5.	Financing; institutional operating budgets, additional funding.
18B-1A-3.	Peer institutions.	18B-1A-6.	Graduate education.
18B-1A-4.	Legislative financing goals.	18B-1A-8.	[Repealed.]

§ 18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

(a) Each state college and university shall prepare an institutional compact for submission to the commission. Each community and technical college shall prepare an institutional compact for submission to the council. When the process herein provided is completed, the institutional compacts shall form the agreements between the institutions of higher education and the commission or council, respectively, and, ultimately, between the institutions of higher education and the people of West Virginia on how the institutions will use their resources to address the intent of the Legislature and the goals set forth in section one-a [§ 18B-1-1a], article one of this chapter. The compacts shall contain the following:

(1) A step-by-step process to accomplish the intent of the Legislature and the goals set forth in section one-a [§ 18B-1-1a], article one of this chapter as organized by the commission and council. The step-by-step process shall be delineated by objectives and shall set forth a time line for achieving the objectives which shall, where applicable, include benchmarks to measure institutional progress as defined in subsection (e) of this section.

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 18B, ARTICLE 1B, OF THE WEST VIRGINIA CODE, AND CHAPTER 18B, ARTICLE 1B, OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

(p) Effective the thirtieth day of June, two thousand, section four [§ 18B-6-4], article six of this chapter, relating to advisory councils of classified employees, is repealed. (2000, c. 100.)

Editor's notes. — Concerning the reference in (a) to "the effective date of this section", Acts 2000, c. 100, provided that the act take effect June 17, 2000.

ARTICLE 1B.

HIGHER EDUCATION POLICY COMMISSION.

Sec.
18B-1B-1. Higher education policy commission established; development of public policy agenda.
18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
18B-1B-3. Meetings and compensation.
18B-1B-4. Powers and duties of higher education policy commission.
18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.
18B-1B-6. Appointment of institutional presidents; evaluation.
18B-1B-7. Duties of higher education policy commission during transition year.
18B-1B-8. Higher education accountability; institutional and statewide report cards.
18B-1B-9. Statewide master plan.

Effective dates. — Acts 2000, c. 100, provided that the act take effect June 17, 2000.

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

There is hereby created the "higher education policy commission", hereinafter referred to as the "commission", which is responsible for developing, gaining consensus around and overseeing the implementation of a public policy agenda. It is the intent of the Legislature that the commission be responsible for development and articulation of the public policy agenda for higher education and other statewide issues pursuant to section one-a [§ 18B-1-1a], article one of this chapter. All matters of governance not specifically assigned to the commission by law are the duty and responsibility of the governing board or boards. (2000, c. 100.)

§ 18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of nine members, all of whom are entitled to vote. One is the secretary of education and the arts, ex officio. One is the state superintendent of schools: Provided, That if the state superintendent of

schools desires not to serve, the state board of education shall submit to the governor the names of three nominees, which may include members of the state board of education. The governor shall select from the nominees a member to serve on the commission. The three nominees shall be persons who are knowledgeable in the area of public education policy, are able to represent the state board of education and who understand and are committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a [§ 18B-1-1a], article one of this chapter.

(b) The other seven members of the commission shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate: Provided, That prior to appointment, the governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a [§ 18B-1-1a], article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine to participate in interviewing potential candidates. Each member appointed to the commission by the governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in section one-a, article one of this chapter.

(c) The governor may not appoint any person to be a member of the commission who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or an appointee or employee of any governing board or an immediate family member of any employee under the jurisdiction of the commission or any governing board. Of the members appointed by the governor from the public at large, no more than four thereof shall belong to the same political party and at least two shall be appointed from each congressional district.

(d) The governor shall appoint seven members to the commission on the first day of July, two thousand, or as soon thereafter as is practicable and the original terms of all members shall commence on the first day of July, two thousand.

(e) The terms of the members appointed by the governor shall be for overlapping terms of four years, except, of the original appointments, one shall be appointed to a term of one year, two shall be appointed to a term of two years, two shall be appointed to a term of three years and two shall be appointed to a term of four years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of four years.

(f) The governor shall appoint a member to fill any vacancy among the seven members of the commission appointed by the governor, by and with the advice and consent of the Senate, which member appointed to fill such vacancy shall serve for the unexpired term of the vacating member. The governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(g) No member appointed by the governor shall be eligible to serve more than two consecutive terms.

(h) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(i) No member of the commission appointed by the governor may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal of the state elective officers by the governor. (2000, c. 100.)

§ 18B-1B-3. Meetings and compensation.

(a) The secretary of education and the arts shall call the initial meeting of the commission and preside until a chairperson is selected. Thereafter, the commission shall meet as needed at the time and place specified by the call of the chairperson.

(b) The commission shall hold an annual meeting each June for the purpose of electing officers for the next fiscal year. At the annual meeting, the commission shall elect from its members appointed by the governor a chairperson and other officers as it may consider necessary or desirable: Provided, That the initial meeting for the purpose of selecting the first chairperson and other officers shall be held during July, two thousand, or as soon thereafter as practicable. All officers shall be elected from the citizen appointees. The chairperson and other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year: Provided, however, That the terms of officers elected in July, two thousand, begin upon election and end on the thirtieth day of June, two thousand one. The chairperson of the board may serve no more than two consecutive terms as chair.

(c) Members of the commission shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

(d) A majority of the members constitutes a quorum for conducting the business of the commission. (2000, c. 100.)

§ 18B-1B-4. Powers and duties of higher education policy commission.

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a [§ 18B-1-1a], article one of this chapter. To that end, the commission has the following powers and duties:

(1) Develop, oversee and advance the public policy agenda to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a [§ 18B-1-1a], article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two [§ 18B-1A-2], article one-a of this chapter and to develop and implement the master plan described in section ten [§ 18B-1B-10] of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five [§ 18B-1A-5], article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and 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 [§ 18B-1-1a], article one of this chapter;

(3) Create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission shall seek input from the Legislature and the governor 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) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education system as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Review the progress of community and technical colleges in every region of West Virginia; such review includes, but is not limited to, evaluating and reporting annually to the legislative oversight commission on education accountability on the step-by-step implementation required in article three-c [§§ 18B-3C-1 et seq.] of this chapter;

(7) Serve as the accountability point for the governor for implementation of the public policy agenda and for the Legislature by maintaining a close working relationship with the legislative leadership and the legislative oversight commission on education accountability;

(8) Promulgate legislative rules pursuant to article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a to fulfill the purposes of section five, [§ 18B-1A-5] article one-a of this chapter;

(9) Establish and implement a peer group for each public institution of higher education in the state as described in section three [§ 18B-1A-3], article one-a of this chapter;

(10) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions;

(11) In January, two thousand one, and annually thereafter, report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings, on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of the system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter;

(B) An analysis of enrollment data collected pursuant to subsection (i), section one [§ 18B-10-1], article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (12) of this subsection and the justification for such priority;

(E) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter;

(12) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments;

(13) On or before the first day of October, two thousand, develop, establish and implement guidelines for institutions to follow concerning extensive capital projects. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed one million dollars in cost. No such project may be pursued by an institution without the approval of the commission nor may an institution participate directly or indirectly with any public or private entity in any capital project which has the potential to exceed one million dollars in cost;

(14) Draw upon the expertise available within the governor's work force investment office and the West Virginia development office as a resource in the area of work force development and training;

(15) Acquire legal services as are considered necessary, including representation of the commission, its institutions, 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;

(16) Employ a chancellor for higher education pursuant to section five [§ 18B-1B-5] of this article;

(17) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission;

(18) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

(19) Conduct a study of the faculty tenure system as administered by the governing boards with specific attention to the role of community service and other criteria for achieving tenured status. The commission shall make a report of its findings and recommendations to the legislative oversight commission on education accountability by the first day of July, two thousand one;

(20) Advise and consent in the appointment of the presidents of the institutions of higher education pursuant to section six [§ 18B-1B-6] of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a [§ 18B-1-1a], article one of this chapter;

(21) Approve the total compensation package from all sources for institutional presidents, as proposed by the governing boards. The governing boards 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;

(22) Establish and 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;

(23) Approve and implement a uniform standard, as developed by the chancellor, 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 throughout the public higher education system. The chancellor shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the state board of education and the state superintendent of schools;

(24) Review and approve or disapprove capital projects as described in subdivision (12), subsection (a) of this section;

(25) Develop and implement an oversight plan to manage system-wide technology such as 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, increase the delivery of instruction to nontraditional students, provide services to business and industry and increase the management capabilities of the higher education system; and

(B) Reviewing courses and programs offered within the state by nonstate public or private institutions of higher education;

(26) Establish and implement policies and procedures to ensure that students 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 is consistent with sound academic policy;

(27) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a 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 is consistent with sound academic policy;

(28) Establish and implement policies and procedures to ensure that students 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 is consistent with sound academic policy;

(29) Establish and implement policies and programs, in cooperation with the institutions of higher education, through which students who have 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 they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(30) Seek out and attend regional, national and international meetings and forums on education and work force development related topics, as in the commission's discretion is 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 and objectives pursuant to section one-a [§ 18B-1-1a], article one of this chapter;

(31) Develop, establish and implement guidelines for higher education governing boards and institutions to follow when considering capital projects. The guidelines shall include, but not be limited to, the following:

(A) That the governing boards and institutions not approve or promote projects that give competitive advantage to new private sector projects over existing West Virginia businesses, unless the commission determines such private sector projects are in the best interest of the students, the institution and the community to be served; and

(B) That the governing boards and institutions not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties.

The commission shall determine whether the guidelines developed pursuant to this subdivision should apply to any project which a governing board and institution allege to have been planned on or before the seventeenth day of June, two thousand. In making the determination, the commission shall be guided by the best interests of the students, the institution and the community to be served;

(32) Certify to the Legislature, on or before the first day of February, two thousand one, the priority funding percentages and other information needed to complete the allocation of funds in section five [§ 18B-1A-5], article one-a of this chapter;

(33) Consider and submit to the appropriate agencies of the executive and legislative branches of state government, a single budget for higher education that reflects recommended appropriations: Provided, That on the first day of January, two thousand one, and annually thereafter, the commission shall submit the proposed institutional allocations based on each institution's progress toward meeting the goals of its institutional compact;

(34) Initiate a full review and analysis of all student fees charged by state institutions of higher education and make recommendations to the legislative oversight commission on education accountability no later than the second day of January, two thousand two. The final report shall contain findings of fact and recommendations for proposed legislation to condense, simplify and streamline the fee schedule and the use of fees or other money collected by state institutions of higher education;

(35) The commission has the authority to assess institutions for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives;

(36) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(37) Make appointments to boards and commissions where this code requires appointments from the state college system board of directors or the university of West Virginia system board of trustees which were abolished effective the thirtieth day of June, two thousand. Notwithstanding any provisions of this code to the contrary, the commission may appoint one of its own members or any other citizen of the state as its designee. The commission shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(38) Assume the powers set out in section five [§ 18B-3-5], article three of this chapter. The rules previously promulgated by the state college system board of directors pursuant to that section are hereby transferred to the commission and shall continue in effect until rescinded, revised, altered or amended by the commission;

(39) Examine and determine the feasibility of recommendations contained in the Implementation Board Report presented to the commission in January, two thousand one, and, at the discretion of the commission, create the advantage valley community college network to enhance provision of community and technical college education in the responsibility areas of Marshall University, West Virginia state college and West Virginia university institute of technology;

(40) Pursuant to the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code and section six [§ 18B-1-6], article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission may promulgate a new uniform rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

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

(42) Promulgate a joint rule establishing tuition and fee policy. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

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

(E) Such other policies as the commission considers appropriate; and

(43) Develop a method for the council, or members thereof, to participate in the selection of administrative heads of the community and technical colleges.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions including use of incentive money to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Administration of state and federal student aid programs, including promulgation of any rules formerly vested in the previous governing boards in relation to those programs;

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

(8) Development, establishment and implementation of information, assessment and accountability systems including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Developing, establishing and implementing policies 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;

(10) Development, implementation and oversight of statewide and regionwide projects and initiatives such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the commis-

sion particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided for in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The commission is authorized to withdraw specific powers of any governing board for a period not to exceed two years if the commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one [§§ 18B-1-1 et seq.] of this chapter;

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

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

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

(e) Notwithstanding the provisions of section six [§ 18B-1A-6], article one-a of this chapter, the commission shall undertake a study of the most effective and efficient strategies and policies to address the findings and intent of that section.

(1) The issues addressed by this study shall include, but not be limited to:

(A) Strategies to ensure access to graduate education;

(B) The development of state colleges as regional graduate centers with authority to broker access to graduate programs in their responsibility areas;

(C) The process by which state colleges obtain authorization to grant graduate degrees;

(D) The relationship of regional graduate centers at state colleges to graduate programs offered within those regions by state universities; and

(E) Other issues related to initiatives to meet each region's need and enhance the quality and competitiveness of graduate programs offered and/or brokered by West Virginia state colleges and universities.

(2) The commission shall report the findings of this study along with the recommendations for legislative actions, if any, to address these findings and the intent of this section, to the legislative oversight commission on education accountability by the first day of January, two thousand one. (2000, c. 100; 2001, c. 110.)

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, in (a)(11)(C), deleted "and" from the end; in (a)(13), added "nor may an institution participate... one million dollars in cost"; in (a)(14) and (a)(30), substituted "work force" for "workforce"; in the second paragraph of (a)(31)(B), substituted "allege" for "alleges" and "seventeenth day of June, two thousand" for "effective date of this section"; added (a)(37) through (a)(43); in (b)(6), added "including promulgation of any rules... to those programs"; in (d), deleted "institu-

tional" preceding "governing board"; and in (d)(2) and (d)(3), deleted "institutional" preceding "board of governors".

Editor's notes. — "Section ten of this article", referred to in (a)(1), does not exist. The intended reference is likely to "section nine of this article" (§ 18B-1B-9).

§ 18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

(a) The commission, created pursuant to section one [§ 18B-1B-1] of this article, shall employ a chancellor for higher education who shall be the chief executive officer of the commission and who shall serve at its will and pleasure. The vice chancellor for administration shall serve as the interim chancellor until a chancellor is employed.

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

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

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

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

(5) Holds or retains no other administrative position within the system of higher education while employed as chancellor.

(c) The chancellor shall be compensated on a basis in excess of, but not to exceed twenty percent greater than, the base salary of any president of a state institution of higher education or the administrative head of a governing board.

(d) With the approval of the commission, the chancellor may employ a vice chancellor for health sciences who shall serve at the will and pleasure of the chancellor. The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine, and the West Virginia school of osteopathic medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The vice chancellor for health sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of vice chancellor of health sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.

(e) With the approval of the commission, the chancellor shall employ a vice chancellor for community and technical college education and work force development who serves at the will and pleasure of the chancellor. The duties of this position include serving as the chief executive officer of the West Virginia council for community and technical college education created pursuant to article two-b [§§ 18B-2B-1 et seq.] of this chapter, and such other duties as assigned by law or by the commission. Any reference in this code to the vice chancellor for community and technical colleges means the vice chancellor for community and technical college education and work force development, which vice chancellor for community and technical colleges shall become the vice

chancellor for community and technical college education and work force development. It is the duty and responsibility of the vice chancellor for community and technical college education and work force development to:

(1) Provide assistance to the commission, the chancellor and the governing boards on matters related to community and technical college education;

(2) Advise, assist and consult regularly with the institutional presidents; institutional boards of governors or boards of advisors, as appropriate; and district consortia committees of the state institutions of higher education involved in community and technical college education; and

(3) Perform all duties assigned by the chancellor, the commission and state law.

(f) With the approval of the commission, the chancellor shall employ a vice chancellor for administration pursuant to section two [§ 18B-4-2], article four of this chapter.

(g) With the approval of the commission, the chancellor may employ a vice chancellor for state colleges who shall serve at the will and pleasure of the chancellor. It is the duty and responsibility of the vice chancellor for state colleges to:

(1) Provide assistance to the commission, the chancellor and the state colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college;

(3) Serve as an advocate and spokesperson for the state colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;

(4) Perform all duties assigned by the chancellor, the commission and state law;

In addition, the vice chancellor for state colleges has the responsibility and the duty to provide staff assistance to the institutional presidents and governing boards to the extent practicable.

(h) Apart from the offices of the vice chancellors as set forth in this section and section two [§ 18B-4-2], article four of this chapter, the chancellor shall determine the organization and staffing positions within the office that are necessary to carry out his or her powers and duties and may employ necessary staff.

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

(j) The chancellor shall be responsible for the day-to-day operations of the commission and shall have the following responsibilities:

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

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter and in the institutional compacts;

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

(4) On and after the first day of July, two thousand one, to assist the governing boards in developing rules, subject to the provisions of section six [§ 18B-1-6], article one of this chapter: Provided, That nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code. The chancellor shall be responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

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

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

(*l*) The chancellor is the primary advocate for higher education and, with the commission, advises the Legislature on matters of higher education in West Virginia. As the primary advocate for higher education, the chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law.

(m) The chancellor may design and develop for consideration by the commission new statewide or regional initiatives in accordance with the goals set forth in section one-a [§ 18B-1-1a], article one of this chapter and the public policy agenda articulated by the commission.

(n) The chancellor shall work closely with members of the state board of education and with the state superintendent of schools to assure that the following goals are met:

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

(2) Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the commission and the state board of education, the chancellor shall serve as an ex officio, nonvoting member of the state board of education. (2000, c. 100; 2001, c. 110.)

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, in (e), substituted "work force" for "workforce" and rewrote the second sentence; in (g), substituted "chancellor may employ" for "chancellor shall employ"; in (g)(1), deleted "and freestanding community and technical colleges" following "state colleges"; in (g)(2), deleted "or freestanding community and technical college" from the end; in (g)(3), deleted "and community and technical colleges" following "state colleges"; deleted former (g)(5) pertaining to establishing guidelines for restrictions on the use of public funds by the colleges to influence public policy; rewrote former (j)(4) and (j)(5) as present (j)(4), and redesignated former (j)(6) as (j)(5).

§ 18B-1B-6. Appointment of institutional presidents; evaluation.

(a) *Appointment of institutional presidents.* — Effective on the first day of July, two thousand, appointment of presidents of the public institutions of higher education shall be made as follows:

(1) Subject to the approval of the commission, the appropriate governing board of the institution shall appoint a president for Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university;

(2) Subject to the approval of the appropriate governing board and to the provisions of article three-c [§§ 18B-3C-1 et seq.] of this chapter, the president of the appropriate institution shall appoint the president of the regional campuses of West Virginia university and of the community and technical colleges which remain linked administratively to a sponsoring institution. The presidents of such regional campuses and community and technical colleges shall serve at the will and pleasure of the institutional president. The president of the sponsoring institution shall appoint a president for the administratively linked community and technical college at the appropriate time as outlined in the institutional compact and approved by the commission.

(3) Subject to the approval of the commission and to the provisions of articles three-c and three-f [§§ 18B-3C-1 et seq. and §§ 18B-3F-1 et seq.] of this chapter, the president of the appropriate institution shall appoint the provost in those cases where the community and technical college remains as a component of another institution. The provost shall serve at the will and pleasure of the president of the employing institution.

(b) *Incumbent heads of institutions.* — Any president of a public institution of higher education in office on the first day of July, two thousand, shall continue in office subject to state law: Provided, That the provost of an administratively linked community and technical college in office on the thirtieth day of June, two thousand one, may become the president of that community and technical college on the first day of July, two thousand one, with the approval of the governing board of the institution and subject to the consent of the commission. The presidents shall continue in office subject to state law and subject to the will and pleasure of the appropriate governing board or employing institution.

(c) *Evaluation of institutional presidents.* — The governing boards shall conduct written performance evaluations of each institution's president: Provided, That the presidents of regional campuses shall be evaluated by the president of West Virginia university and the presidents of administratively linked community and technical colleges shall be evaluated by the president of the employing institution. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact. (2000, c. 100.)

§ 18B-1B-7. Duties of higher education policy commission during transition year.

During the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, the following is the intent of the Legislature:

(a) The higher education interim governing board, established in article one-c [§§ 18B-1C-1 et seq.] of this chapter, is the governing agency for public higher education in West Virginia;

(b) The chancellor for higher education shall provide to the governing board adequate and appropriate staff assistance to carry out its duties and responsibilities as assigned by law;

(c) The commission has the power and authority to require the interim governing board to transfer from accounts under the control of the interim governing board such sums as the commission believes appropriate for the proper performance of its duties and responsibilities;

(d) The commission shall focus its attention first on organizing itself to carry out its duties and responsibilities, including, but not limited to, establishing a search and screening process to identify candidates and to employ a chancellor;

(e) The commission shall focus its attention second on the following policy areas, but may consider others as appropriate:

(1) Developing legislative rules as required by law;

(2) Researching and developing the elements of the finance plan required by section five [§ 18B-1A-5], article one-a of this chapter;

(3) Developing guidelines to be used by institutional boards of governors in employing institutional presidents;

(4) Developing a statewide master plan pursuant to section nine [§ 18B-1B-9] of this article;

(5) Developing and approving the institutional compacts as provided in section two [§ 18B-1A-2], article one-a of this chapter;

(6) Developing a plan to provide on-going education and training opportunities to members of institutional boards of governors and institutional boards of advisors, including, but not limited to, exploring the possibility of obtaining private funds to bring members together for orientation, education and leadership training prior to the first day of July, two thousand one;

(7) Establishing a peer group for each public institution of higher education in the state as provided in section three [§ 18B-1A-3], article one-a of this chapter; and

(8) Developing the elements of the higher education report card to be used to report institutional and system progress on meeting the goals and objectives of the institutional compacts and of section one-a [§ 18B-1-1a], article one of this chapter; and

(f) On or before the first day of January, two thousand one, the commission shall certify to the governor, the president of the Senate and the speaker of the House of Delegates draft legislation which will accomplish the transfer on the first day of July, two thousand one, of all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which should be

transferred or vested in the commission, the governing boards or any other agency. In the event the Legislature does not enact legislation which accomplishes the recommended transfers or vesting, effective the first day of July, two thousand one, all such matters are transferred to and vested in the commission and the commission is hereby authorized and directed to delegate such matters as is consistent with assigned powers and duties in section four [§ 18B-1B-4] of this article and section four [§ 18B-2A-4], article two-a of this chapter. In the event of a dispute between or among the commission and the governing boards as to the proper delegation of these matters, the decision of the commission shall control. (2000, c. 100.)

§ 18B-1B-8. Higher education accountability; institutional and statewide report cards.

Effective on the first day of July, two thousand one:

(a) The commission is directed to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. This information shall be consistent and comparable between and among the state institutions of higher education and, if applicable, comparable with information from peer institutions in the region and the nation.

(b) On or before the first day of July, two thousand one, the chancellor shall review policy series sixteen, related to the higher education report card, of the rules of the board of trustees and board of directors and determine whether a new rule should be adopted providing for the collection, analysis and dissemination of data and information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, directives, goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter, the institutional compacts and in comparison to their peers. The rules shall provide the legislative oversight commission on education accountability with full and accurate information while minimizing the institutional burden of recordkeeping and reporting. The rules shall include uniform definitions for the various indicators of student and institutional performance and guidelines for the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The report card forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material which a governing board wishes to include shall be contained in a separate appendix available for a reasonable fee to the general public upon request.

(c) The president or chief executive officer of each public college, university or community and technical college shall prepare and submit annually all requested data to the commission at the time established by the commission.

The commission shall prepare report cards for institutions under their jurisdiction and in accordance with the guidelines set forth in this section and rules promulgated under this section.

(d) The higher education central office staff under the direction of the vice chancellor for administration shall provide technical assistance to each insti-

tution and governing board in data collection and reporting and is responsible for assembling the statewide report card from information submitted by each governing board. The statewide report card shall include the data for each institution for each separately listed, applicable indicator and the aggregate of the data for all public institutions of higher education. The statewide report card shall be prepared using actual institutional, state, regional and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards and the state system of higher education. The report card also shall include goals and trends for the institutions and the higher education system and shall include all the information required either by statute or by rule as authorized in subsection (b) of this section. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case such year shall be clearly footnoted.

(e) The statewide report card shall be completed and disseminated with copies to the legislative oversight commission on education accountability prior to the first day of January of each year.

(f) For a reasonable fee, the chancellor shall make copies of the report cards available to any individual requesting them. (2000, c. 100.)

§ 18B-1B-9. Statewide master plan.

(a) The commission shall develop a master plan for higher education for the state.

(b) The plan shall be developed on or before the first day of July, two thousand one, and shall be communicated to the legislative oversight commission on education accountability.

(c) The master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives outlined in section one-a [§ 18B-1-1a], article one of this chapter;

(2) A well-developed set of goals, as set forth in section one-a [§ 18B-1-1a], article one of this chapter, outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinants and projections for public higher education and other matters necessary in such a plan to assure that the needs of the state for a quality system of higher education are addressed; and

(3) A plan for involving and collaborating with the state board of education, the public and private institutions of higher education and other education providers to assure that a comprehensive system of education is developed for West Virginia.

(d) The master plan for higher education for the state shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary. (2000, c. 100.)

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Editor's notes. — Former § 18B-1A-8 (enacted by Acts 2000, c. 100), concerning sections repealed, was repealed by Acts 2004, c. 92, effective March 13, 2004.

ARTICLE 1B.

HIGHER EDUCATION POLICY COMMISSION.

Sec.		Sec.	
18B-1B-1.	Higher education policy commission established; development of public policy agenda.	18B-1B-6.	Appointment of institutional presidents; evaluation.
18B-1B-2.	Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.	18B-1B-7.	[Repealed.]
18B-1B-4.	Powers and duties of higher education policy commission.	18B-1B-10.	Goals of efficiency and effectiveness; findings; reports to commission and legislative oversight commission on education accountability.
18B-1B-5.	Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.	18B-1B-11.	Study of licensing and oversight of certain institutions providing post-secondary education.
		18B-1B-12.	Research challenge.

Code of State Rules References. — Higher education report card, 131 CSR 16, effective April 17, 1996.

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

There is hereby created the "higher education policy commission", hereinafter referred to as the "commission". It is the intent of the Legislature that the commission be responsible to develop, gain consensus around and oversee the public policy agenda for higher education and other statewide issues pursuant to section one-a [§ 18B-1-1a], article one of this chapter under the following conditions:

(a) It is the responsibility of the commission to work collaboratively with the council to develop and gain consensus around the public policy agenda for community and technical colleges;

(b) It is the responsibility of the council to oversee the implementation of the public policy agenda for the institutions under its jurisdiction.

(c) All matters of governance not specifically assigned to the commission or council by law are the duty and responsibility of the governing boards. (2000, c. 100; 2004, c. 92.)

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, rewrote the section.

§ 18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of ten members. One is the secretary of education and the arts, ex officio. One is the state superintendent of schools, ex officio. One is the chair of the West Virginia council for community and technical college education who is an ex officio, nonvoting member.

(b) The other seven members of the commission are citizens of the state, appointed by the governor, by and with the advice and consent of the Senate. Prior to appointment, the governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a [§ 18B-1-1a], article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine to participate in interviewing potential candidates. Each member appointed to the commission by the governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in said section.

(c) The governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an appointee or employee of any governing board; or an immediate family member of any employee under the jurisdiction of the commission, the council or any governing board. Of the members appointed by the governor from the public at large, no more than four thereof may belong to the same political party and at least two shall be appointed from each congressional district.

(d) The terms of the members appointed by the governor are for overlapping terms of four years.

(e) The governor shall appoint a member to fill any vacancy among the seven members appointed by the governor, by and with the advice and consent of the Senate. Any member appointed to fill a vacancy serves for the unexpired term of the vacating member. The governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(f) A member appointed by the governor may not serve more than two consecutive terms.

(g) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(h) A member of the c
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prescribed by law for the r
(2000, c. 100; 2004, c. 92.)

Effect of amendment of
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§ 18B-1B-4. Powers
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(C) Invest and provide
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(3) In collaboration wi
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(h) A member of the commission appointed by the governor may not be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the governor. (2000, c. 100; 2004, c. 92.)

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, rewrote the section.

§ 18B-1B-4. Powers and duties of higher education policy commission.

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a [§ 18B-1-1a], article one 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. To that end, the commission has the following powers and duties relating to the institutions under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to section one [§ 18B-1A-1], article one-a of this chapter to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a [§ 18B-1-1a], article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two [§ 18B-1-2], article one-a of this chapter and to develop and implement the master plan described in section nine [§ 18B-1-9] of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation jointly with the council of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five [§ 18B-1A-5], article one-a of this chapter;

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

(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 [§ 18B-1-1a], article one of this chapter; and

(D) Incorporate the plan for strategic funding to strengthen capacity for support of community and technical college education established by the West Virginia council for community and technical college education pursuant to the provisions of section six [§ 18B-2B-6], article two-b of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, 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 and the governor 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) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to:

(A) The governor for implementation of 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) Jointly with the council, promulgate legislative rules pursuant to article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code to fulfill the purposes of section five [§ 18B-1A-5], article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three [§ 18B-1A-3], article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions pursuant to section two [§ 18B-1A-2], article one-a of this chapter;

(10) Annually report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter;

(B) An analysis of enrollment data collected pursuant to section one [§ 18B-10-1], article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority;

(D) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter;

(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments. It is the responsibility of

the commission to assure a f
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take the following steps:

(A) Receive the list of pri
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subsection (b), section six [§ 18

(B) Place the ranked list of
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(C) Select a minimum of thre
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the three projects selected must
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(12) Maintain guidelines fo
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(14) Employ a chancellor
[§ 18B-1B-5] of this article;

(15) Employ other staff as n
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(16) Provide suitable office
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(17) Advise and consent i
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(18) Approve the total comp
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the commission to assure a fair distribution of funds for capital projects between the commission and the council. To that end the commission shall take the following steps:

(A) Receive the list of priorities developed by the council for capital investment for the institutions under the council's jurisdiction pursuant to subsection (b), section six [§ 18B-2B-6], article two-b of this chapter;

(B) Place the ranked list of projects on the agenda for action within sixty days of the date on which the list was received;

(C) Select a minimum of three projects from the list submitted by the council to be included on the ranked list established by the commission. At least one of the three projects selected must come from the top two priorities established by the council.

(12) Maintain guidelines for institutions to follow concerning extensive capital projects. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed one million dollars in cost. Such a project may not be pursued by an institution without the approval of the commission. An institution may not participate directly or indirectly with any public or private entity in any capital project which has the potential to exceed one million dollars in cost;

(13) Acquire legal services as are considered necessary, including representation of the commission, its institutions, 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 [§ 18B-1B-5] 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 the provisions of article four [§§ 18B-4-1 et seq.] of this chapter;

(16) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

(17) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six [§ 18B-1B-6] of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a [§ 18B-1-1a], article one of this chapter;

(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards 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;

(19) Establish and 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 throughout the public higher education system. 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) Review and approve or disapprove capital projects as described in subdivision (11) of this subsection;

(22) Jointly with the council, develop and implement an oversight plan to manage systemwide technology such as 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;

(23) Establish and implement policies and procedures to ensure that students 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 is consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a 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 is consistent with sound academic policy;

(25) Establish and implement policies and procedures to ensure that students 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 is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and the institutions of higher education, through which students who have 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 they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(27) Seek out and atte
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(27) Seek out and attend regional, national and international meetings and forums on education and work force development-related topics, as in the commission's discretion is 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 and objectives pursuant to section one-a [§ 18B-1-1a], article one of this chapter;

(28) Develop, establish and implement guidelines for higher education governing boards and institutions to follow when considering capital projects. The guidelines shall include, but not be limited to, the following:

(A) That the governing boards and institutions not approve or promote projects that give competitive advantage to new private sector projects over existing West Virginia businesses, unless the commission determines such private sector projects are in the best interest of the students, the institution and the community to be served; and

(B) That the governing boards and institutions not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government a budget that reflects recommended appropriations from the commission and the institutions under its jurisdiction. The commission shall submit as part of its budget proposal the separate recommended appropriations it received from the council both for the council and the institutions under the council's jurisdiction. The commission annually shall submit the proposed institutional allocations based on each institution's progress toward meeting the goals of its institutional compact;

(30) The commission has the authority to assess institutions under its jurisdiction 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;

(31) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(32) Make appointments to boards and commissions where this code requires appointments from the state college system board of directors or the university of West Virginia system board of trustees which were abolished effective the thirtieth day of June, two thousand, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) Pursuant to the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code and section six [§ 18B-1-6], article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

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

(35) Implement a policy 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; and

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

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

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

(E) Such other policies as the commission and council consider appropriate.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

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

(5) Development of budget and allocation of resources, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

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

(7) 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;

(8) Development, establish
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Higher education finance policy,
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(8) Development, establishment and implementation of information, assessment and accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, developing, establishing and implementing policies 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 pursuant to the findings and policy recommendations to be determined as set forth in section eleven [§ 18B-1B-11] of this article;

(10) Development, implementation and oversight of statewide and regionwide 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 funding from any source; and

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

(c) In addition to the powers and duties provided for in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The commission is authorized to withdraw specific powers of any governing board of an institution under its jurisdiction for a period not to exceed two years if the commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one [§§ 18B-1-1 et seq.] of this chapter;

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

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

(4) The period of withdrawal of specific powers may not exceed two years during which time the commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance. (2000, c. 100; 2001, c. 110; 2004, c. 92.)

Code of State Rules References. — Academic freedom, professional responsibility, promotion and tenure, 133 CSR 9, effective December 25, 2001.

Capital project management, 133 CSR 12, effective December 25, 2001.

Higher education finance policy, 133 CSR 2, effective July 1, 2001.

Policy regarding program review, 133 CSR 10, effective December 25, 2001.

Submission of proposals for new academic programs and the discontinuance of existing programs, 133 CSR 11, effective December 25, 2001.

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, rewrote the section.

§ 18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

(a) The commission, created pursuant to section one [§ 18B-1B-1] of this article, shall employ a chancellor for higher education who is the chief executive officer of the commission and who serves at its will and pleasure.

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

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

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

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

(5) Holds or retains no other administrative position within a system of higher education while employed as chancellor.

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

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

(e) The chancellor shall be compensated on a basis in excess of, but not to exceed twenty percent greater than, the base salary of any president of a state institution of higher education or the administrative head of a governing board.

(f) The commission may employ a vice chancellor for health sciences who serves at the will and pleasure of the commission. The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The vice chancellor for health sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of vice chancellor of health sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.

(g) The commission shall employ a vice chancellor for administration pursuant to section two [§ 18B-4-2], article four of this chapter.

(h) The commission may employ a vice chancellor for state colleges who serves at the will and pleasure of the commission. It is the duty and responsibility of the vice chancellor for state colleges to:

(1) Provide assistance to the commission, the chancellor and the state colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college;

(3) Serve as an advocate and spokesperson for the state colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;

(4) Perform all duties assigned by the chancellor, the commission and state law.

In addition, the vice chancellor for state colleges has the responsibility and the duty to provide staff assistance to the institutional presidents and governing boards to the extent practicable.

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

(j) The chancellor is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the institutions under its jurisdiction:

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

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter and in the institutional compacts;

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

(4) To assist the governing boards in developing rules, subject to the provisions of section six [§ 18B-1-6], article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code. The chancellor is responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

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

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

(*l*) The chancellor, with the commission, advises the Legislature on matters of higher education in West Virginia. The chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law.

(m) The chancellor may design and develop for consideration by the commission new statewide or regional initiatives in accordance with the goals set forth in section one-a [§ 18B-1-1a], article one of this chapter and the public policy agenda articulated by the commission. In those instances where the

initiatives to be proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the chancellor for higher education and the chancellor for community and technical college education shall design and develop the initiatives jointly for consideration by the commission and the council.

(n) The chancellor shall work closely with members of the state board of education and with the state superintendent of schools to assure that the following goals are met:

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

(2) Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the commission and the state board of education, the chancellor serves as an ex officio, nonvoting member of the state board of education. (2000, c. 100; 2001, c. 110; 2004, c. 92.)

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, rewrote the section.

§ 18B-1B-6. Appointment of institutional presidents; evaluation.

(a) *Appointment of institutional presidents.* — Appointment of presidents of the public institutions of higher education shall be made as follows:

(1) Subject to the approval of the commission, the governing board of the institution appoints a president for Bluefield state college, Concord college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, West Liberty state college, West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(2) Subject to the approval of the council and to the provisions of article three-c [§§ 18B-3C-1 et seq.] of this chapter, the governing board of West Virginia University appoints the president of the regional campus known as West Virginia university at Parkersburg. When selecting candidates for consideration to fill the office of president, the governing board shall use the search and screening process provided for in section one [§ 18B-6-1], article six of this chapter.

Subject to the approval of the commission, the governing board of West Virginia University appoints the president of the regional campus known as West Virginia university institute of technology. The president of each regional campus serves at the will and pleasure of the appointing governing board.

(3) Subject to the approval of the council, the governing board of the community and technical college appoints a president for eastern West Virginia community and technical college, southern West Virginia community and technical college and West Virginia northern community and technical college.

(4) Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each administratively linked community and technical colleges which shares a physical campus location with the sponsoring institution, including Fairmont state community and

technical college, Marsh
and technical college at
West Virginia state com

(5) Subject to the ap
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for "institutional presidents"

§ 18B-1B-7.

Repealed by Acts 20(

Editor's notes. — Forme
acted by Acts 2000, c. 100
duties of higher education

technical college, Marshall community and technical college, the community and technical college at West Virginia university institute of technology and West Virginia state community and technical college.

(5) Subject to the approval of the council, the governing board of the community and technical college appoints a president for each administratively linked community and technical college which does not share a physical campus location with the sponsoring institution, including New River community and technical college and the community and technical college of Shepherd.

Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each of these two community and technical colleges until the institution gains independent accreditation.

(b) *Other appointments.* — Effective the first day of July, two thousand five, the institutional president shall appoint a provost to be the administrative head of the Potomac campus of West Virginia university.

(c) *Evaluation of presidents.* — The appointing governing board shall conduct written performance evaluations of each institution's president, including the presidents of administratively linked community and technical colleges. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact. (2000, c. 100; 2003, c. 96; 2004, c. 92.)

Effect of amendment of 2003. — Acts 2003, c. 96, effective March 8, 2003, inserted "provosts" in the section heading; deleted "Effective on the first day of July, two thousand" from the beginning of the introductory language of (a); substituted "article three-c" for "articles three-c and three-f" in (a)(3); rewrote (b); in (c), substituted "administrative heads" for "institutional presidents" in the subheading, "except the presidents" for "Provided, That the presidents," "The provosts" for "and the presidents," and "administrative head" for "president," and inserted "and other consolidated, merged or administratively linked units."

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, rewrote the section.

§ 18B-1B-7.

Repealed by Acts 2004, c. 92.

Editor's notes. — Former § 18B-1B-7 (enacted by Acts 2000, c. 100), concerning the duties of higher education policy commission during transition year, was repealed by Acts 2004, c. 92, effective March 13, 2004.

§ 18B-1B-10. Goals of efficiency and effectiveness; findings; reports to commission and legislative oversight commission on education accountability.

(a) The Legislature finds that it is in the best interests of the citizens of West Virginia for state institutions of higher education to work diligently toward achieving the goals and objectives set forth in section one-a [§ 18B-1-1a], article one of this chapter and in the institutional compacts. One way these goals may be achieved is through collaborative agreements between or among two or more institutions to enhance the scope, quality, or efficiency of education services.

(b) To further these goals of cooperation and coordination, to avoid unnecessary duplication of program development and delivery, and to ensure that programs and services address the public policy agenda established by the Legislature and the commission, compact elements and goals for post-secondary education, by the first day of September, two thousand three, Concord college and Bluefield state college jointly shall complete a comprehensive study of the degree to which these institutions are making progress toward meeting the goals for post-secondary education, their institutional compacts and the public policy agenda and shall report their finding to the commission. The report shall address specific examples of collaboration, cooperation or brokering in academic programs, administrative services or any joint efforts which aim to avoid unnecessary duplication and to ensure delivery of high quality education services.

(c) The commission shall analyze the report prepared by Concord college and Bluefield state college, together with any other relevant data, and report to the legislative oversight commission on education accountability by the first day of November, two thousand three. The report shall contain findings and recommendations to address at least the following areas relevant to the two institutions:

(1) The fiscal status;

(2) The progress in meeting the goals for post-secondary education, the institutional compact, and the public policy agenda;

(3) Possible academic and fiscal advantages that might be derived from an administrative link between the two institutions; and

(4) Any changes to the programs or services of either institution required by the commission based on their findings or those of the institutions.

(d) If the commission determines that either institution has made insufficient progress toward the goals established in this chapter, in the institutional compacts, in the public policy agenda established by the commission, or has not complied with the changes required by the commission pursuant to subsection (c) of this section, the commission immediately shall take any action necessary to further the goals and requirements of this section.

(e) The commission shall continue to monitor and review each institution's compliance with this section. (2003, c. 96.)

Editor's notes. — Acts 2004, tempted to enact a section numbere 10; it was subsequently renumbered 12.

§ 18B-1B-11. Study of institutio tion.

(a) The commission and t policies relating to licensing granting and nondegree-grai programs or courses within through distance learning or

(b) The study shall includ

(1) The strengths and we policies including a determir and whether such protection

(2) The appropriate entity ing and oversight of each ty

(3) The standards to be u such standards; and

(4) The requirements for

The commission and the c recommendations, together ate the recommendations, to accountability by the first d

Effective dates. — Acts 2004, vided that the act take effect Marc

§ 18B-1B-12. Researc

(a) There is established ir as the "research challenge administered by the higher

The moneys deposited in development projects at inst Research includes, but is technology research and de fund shall also be used to institutions of higher educa

(b) The policy commissio state advisory council in its challenge fund and in its d tion and review of proposal component in the state's s contribution of higher educ EPSCoR state advisory co

Editor's notes. — Acts 2004, c. 123 attempted to enact a section numbered 18B-1B-10; it was subsequently renumbered as 18B-1B-12.

Effective dates. — Acts 2003, c. 96, provided that the act take effect March 8, 2003.

§ 18B-1B-11. Study of licensing and oversight of certain institutions providing post-secondary education.

(a) The commission and the council shall conduct a joint study of current policies relating to licensing and oversight of both public and private degree-granting and nondegree-granting entities providing post-secondary education programs or courses within the state or from locations outside this state through distance learning or any technology methods.

(b) The study shall include, but is not limited to, the following:

(1) The strengths and weaknesses of current state and higher education policies including a determination of how well the policies protect consumers and whether such protection should be expanded;

(2) The appropriate entity within public higher education to assume licensing and oversight of each type of institution;

(3) The standards to be used for program approval or a method to develop such standards; and

(4) The requirements for fees and bonding.

The commission and the council shall report their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate the recommendations, to the legislative oversight commission on education accountability by the first day of December, two thousand four. (2004, c. 92.)

Effective dates. — Acts 2004, c. 92, provided that the act take effect March 13, 2004.

§ 18B-1B-12. Research challenge.

(a) There is established in the state treasury a special revenue fund known as the "research challenge fund". Moneys deposited in this fund shall be administered by the higher education policy commission.

The moneys deposited in this fund shall be used to fund coal research and development projects at institutions of higher education located in this state. Research includes, but is not limited to, carbon sequestration and carbon technology research and development projects. The moneys deposited in this fund shall also be used to fund other research and development projects at institutions of higher education in this state.

(b) The policy commission shall use the recommendations of the EPSCoR state advisory council in its allocation of appropriations made to the research challenge fund and in its development of procedures for competitive application and review of proposals for funding. The research challenge is a critical component in the state's strategic plan for economic development and the contribution of higher education in the economic health of the state and the EPSCoR state advisory council is well qualified, by virtue of its research-

oriented mission and membership, to advise the policy commission in the allocation of research challenge funding.

The objectives of the research challenge are to:

(1) Increase the research capacity of institutions of higher education and the competitiveness of these institutions to apply for external funding;

(2) Stimulate the development of research and research products that are directly applicable in improving the economic competitiveness of existing West Virginia industries and the development of new business and jobs in the state;

(3) Leverage limited state resources with private and federal funds to support projects and activities directly related to economic development by requiring matching funds and cooperative agreements with external partners;

(4) Increase the production of undergraduate and graduate students of programs in the sciences, technology, engineering and mathematics, with special attention to emerging disciplines such as biometrics; and

(5) Hold institutions more accountable for the success of research projects funded under this program with the expectation that state support will be phased out and the project or activity will be terminated if it is unable to generate ongoing external support.

(c) The priorities for the research challenge shall be:

(1) Research on energy generation, distribution and utilization that builds on the state's existing energy research strengths, related research products and technology transfer programs;

(2) Research, education and outreach conducted by the EPSCoR program. This federal program is recognized by the national science foundation as the state's primary entity for developing the research capacity that is so important to the state's economic and educational development;

(3) Research projects that are related to the economic development of the state and that have significant potential to attract participation and funding from industrial, federal or foundation partners;

(4) Collaborative projects between higher education and public education to improve science and mathematics education;

(5) Graduate education in science (including medical education), technology, engineering and mathematics. The allocation shall be used for the increase in doctoral students and programs at West Virginia university and Marshall university in these fields; and

(6) Recruitment of eminent scholars to strengthen research capacity and competitiveness for external funding.

(d) The policy commission shall report to the legislative oversight committee on educational accountability annually on the results of the projects and activities funded by the research challenge appropriation.

(e) The priorities established in subsection (c) of this section shall be reviewed biannually by the policy commission and the EPSCoR state advisory council beginning in two thousand six. The policy commission shall include any recommended adjustments in its budget request for the two thousand seven budget. (2004, c. 123.)

Editor's notes. — This sect
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12.

UNIVERSITY OF

§ 18B-2-1. Composi of men pointm [See ed

Cited in Yates v. University
Trustees, 209 W. Va. 487, 549 S
W. Va. LEXIS 50 (2001).

INSTITUTIO

Sec.
18B-2A-1. Composition of and qualifica bers; vacancie reappointmer
18B-2A-4. Powers and duti boards gener

§ 18B-2A-1. Compc tions o appoin

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Editor's notes. — This section was originally enacted as 18B-1B-10; because a section numbered 18B-1B-10 already existed, this section was subsequently renumbered as 18B-1B-12.

Effective dates. — Acts 2004, c. 123, provided that the act take effect March 21, 2004.

ARTICLE 2.

UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§ 18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office [See editor's note].

Cited in Yates v. University of W. Va. Bd. of Trustees, 209 W. Va. 487, 549 S.E.2d 681, 2001 W. Va. LEXIS 50 (2001).

ARTICLE 2A.

INSTITUTIONAL BOARDS OF GOVERNORS.

Sec.
18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.
18B-2A-4. Powers and duties of governing boards generally.
18B-2A-5. Public school service program.
18B-2A-6. University status for public baccalaureate institutions of higher education.

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

(a) A board of governors is continued at each of the following institutions: Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(b) For the community and technical college of Shepherd and New River community and technical college the institutional board of advisors remains in place until the institution achieves independent accreditation as provided in section eight [§ 18B-3C-8], article three-c of this chapter.

(1) As long as the institutional board of advisors remains in place, the chairperson of the board of advisors serves as an ex officio, voting member of the board of governors of the sponsoring institution;

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 18B, ARTICLE 2, OF THE WEST VIRGINIA CODE, AND CHAPTER 18B, ARTICLE 2, OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

ARTICLE 1C.

TRANSITION IMPLEMENTATION.

§§ 18B-1C-1, 18B-1C-2.

Expired June 30, 2001.

Editor's notes. — This article expired by operation of law on June 30, 2001. The article derived from Acts 2000, c. 100.

ARTICLE 2.

UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES [SEE EDITOR'S NOTE].

Sec.
18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
18B-2-2. Meetings and compensation.
18B-2-3. Additional duties of board of trustees.
18B-2-4. [Repealed.]
18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.
18B-2-6. Health sciences education; legislative findings and intent.
18B-2-7. Authorization to sell all or part of Potomac State College of West Virginia University parcels of land located in New Creek and Keyser commonly known as the Potomac State College Farm listed on the public lands inventory as 1PSC6. PSC Parcel No. 6, 1PSC14. PSC Parcel No. 14 and 1PSC16. PSC Parcel No. 16.
18B-2-8. Consortium of comprehensive child development centers; establishment and operation of a consortium of comprehensive child development centers.
18B-2-9. West Virginia University institute of technology.

Editor's notes. — For provisions regarding the termination of the West Virginia board of trustees, see § 18B-2-1(e) and (f).

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§ 18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office [See editor's note].

(a) The board of trustees shall consist of seventeen persons, of whom one shall be the chancellor of the board of directors of the state college system, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one

shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other twelve trustees shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the trustees appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field.

Except for the ex officio trustees, no person shall be eligible for appointment to membership on the board of trustees who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or an appointee or employee of the board of trustees or the board of directors: Provided, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of trustees. Of the twelve trustees appointed by the governor from the public at large, not more than six thereof shall belong to the same political party and at least two trustees shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint twelve trustees as soon after the first day of July, one thousand nine hundred eighty-nine, as is practicable and the original terms of all trustees shall commence on that date.

The terms of the trustees appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of six years.

The governor shall appoint a trustee to fill any vacancy among the twelve trustees appointed by the governor, by and with the advice and consent of the Senate, which trustee appointed to fill such vacancy shall serve for the unexpired term of the vacating trustee. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All trustees appointed by the governor shall be eligible for reappointment: Provided, That a person who has served as a trustee or director during all or any part of two consecutive terms shall be ineligible to serve as a trustee or director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a trustee, each trustee shall qualify as such by taking and subscribing to the oath of office

prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(d) No trustee appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the governor.

(e) The board of trustees is abolished the thirtieth day of June, two thousand.

(f) On the first day of July, two thousand, there is transferred to the interim governing board, all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both. (1989, c. 64; 1993, c. 47; 2000, c. 100.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, added (e) and (f).

Editor's notes. — For provisions regarding the termination of the West Virginia board of trustees, see subsections (e) and (f) supra.

§ 18B-2-2. Meetings and compensation.

(a) The board of trustees shall hold at least ten meetings in every fiscal year, including an annual meeting each June: Provided, That an annual meeting for the purpose of selecting the first chairman shall be held during July, one thousand nine hundred eighty-nine. Except for the annual meeting, which may be held at a location anywhere in the state, the said meetings shall be held on different campuses of institutions in the university system on a rotating basis or at the central office. The board of trustees may set aside time at the meetings at the campuses to afford administrators, faculty, students and classified staff at the institution an opportunity to discuss issues affecting these groups. The board of trustees shall hold at least one meeting each year with the advisory council of faculty, the advisory council of students, and the advisory council of classified employees, each of these bodies to be met with separately. Except as otherwise provided in this section, meetings shall be held on such dates and at such places as the trustees may prescribe. In addition to the statutorily required meetings, the trustees may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the written request of at least three appointed trustees.

Of the fifteen voting members of the board of trustees, eight shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the trustees.

(b) The trustees shall be reimbursed for actual and necessary expenses incident to the performance of such duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the trustees. (1989, c. 64.)

§ 18B-2-3. Additional duties of board of trustees.

(a) The trustees shall govern the university of West Virginia. The trustees shall develop a master educational plan for the university system in the state,

establish research policies for the several institutions within the university system and shall oversee graduate, professional and medical education at the appropriate institutions of higher education under their jurisdiction to the end of avoiding duplication in advanced study, specialty institutes and research.

(b) The board of trustees shall adopt a faculty salary program with an overall goal of attaining salaries equal to the average faculty salaries within similar groups of disciplines and program levels at comparable peer institutions within member states of the southern regional educational board Four-Year 1 at West Virginia university; Four-Year 3 at Marshall university; and appropriate levels at the West Virginia graduate college, Potomac state college of West Virginia university, West Virginia university at Parkersburg and the school of osteopathic medicine as determined by the board of trustees. It is the intent of the Legislature, limited by the extent of appropriations provided specifically therefor, to provide the board of trustees with sufficient funds to meet this goal by fiscal year one thousand nine hundred ninety-six. (1989, c. 64; 1993, c. 47.)

§ 18B-2-4.

Repealed by Acts 1997, c. 85.

Editor's notes. — Former § 18B-2-4 (enacted by Acts 1989, c. 64 and amended by Acts 1992, c. 61), pertaining to the establishment and operation of a graduate college at the Kanawha Valley Graduate Center of West Virginia University, was repealed by Acts 1997, c. 85, effective July 1, 1997.

§ 18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

The board of trustees shall operate and maintain the state school of osteopathy, known as the "West Virginia School of Osteopathic Medicine" and located in Lewisburg, Greenbriar County, as previously established by the board of regents, as a part of the University of West Virginia as defined in section two [§ 18B-1-2], article one of this chapter. The title to all the real property and all facilities and equipment of the West Virginia School of Osteopathic Medicine and the previously existing Greenbriar College of Osteopathic Medicine, located at Lewisburg, Greenbriar County, shall be and remain vested in the board of trustees. The title to any such property originally acquired by or vested in the name of the board of regents is hereby transferred to and shall remain vested in the board of trustees.

The board of trustees shall employ a president and such staff and faculty as determined appropriate for the school, appoint an advisory board consistent with section one [§ 18B-6-1], article six of this chapter and exercise general determination, control, supervision and management of the financial, business

and educational policies and affairs of the school of osteopathic medicine.

The school shall be authorized to offer such curricula, programs, courses and services and confer such degrees as may be approved by the board of trustees. The board of trustees shall fix tuition and establish and set other fees to be charged students as it deems appropriate, including the establishment of special fees for specific purposes. Special fees shall be paid into special funds and be used only for the purposes for which said fees were collected.

The board of trustees shall expend from the appropriations allocated for the West Virginia School of Osteopathic Medicine such funds as are necessary for the operation and conduct of programs, the acquisition of clear title to the property of the Greenbriar College of Osteopathic Medicine, and for necessary capital improvements. The title to all property purchased for the use of the West Virginia School of Osteopathic Medicine shall be vested in the board of trustees.

The board of trustees is authorized to enter into contracts on behalf of the West Virginia School of Osteopathic Medicine with public and private educational institutions, agencies and boards, with governmental agencies and with corporations, partnerships, and individuals for the performance of instructional or other services.

The board of trustees is hereby specifically authorized to contract with the West Virginia anatomical board and the West Virginia anatomical board is hereby specifically authorized to contract with the board of trustees on behalf of the West Virginia School of Osteopathic Medicine for the requisition, use, disposition and control of any body as may come under the authority of the anatomical board: Provided, That such body be used exclusively for educational purposes of the West Virginia School of Osteopathic Medicine.

The board of trustees is further authorized to contract with any other person, corporation or entity for the purchase of cadavers for educational purposes at the West Virginia School of Osteopathic Medicine, notwithstanding any provision of law to the contrary. (1989, c. 64.)

§ 18B-2-6. Health sciences education; legislative findings and intent.

(a) The Legislature hereby finds and declares that the higher education accountability report card for health sciences education as provided for in section eight-a [§ 18B-1-8a], article one of this chapter shall serve as a basis for the accountability and coordination of health sciences education in this state. The Legislature further finds that the preparation of such report card would best be supervised by a vice chancellor for health sciences who is not the director of health and who has the assistance of the staff of each state institution of higher education with health sciences programs.

(b) The Legislature further finds and declares that adequate funding will be pursued to maintain the accreditation, integrity and quality of medical education and other health sciences programs in West Virginia. (1991, c. 62.)

§ 18B-2-7. Authorization to sell all or part of Potomac State College of West Virginia University parcels of land located in New Creek and Keyser commonly known as the Potomac State College Farm listed on the public lands inventory as 1PSC6. PSC Parcel No. 6, 1PSC14. PSC Parcel No. 14 and 1PSC16. PSC Parcel No. 16.

(a) The board of trustees is hereby authorized and empowered to sell those parcels of land located on New Creek and Keyser Districts, Mineral County, West Virginia, commonly known as the Potomac State College Farm and listed on the Potomac State College index description of parcel use and list of parcels of lands and on the public lands inventory as: (1) 1PSC6. PSC Parcel No. 6, containing approximately 223.17 acres, (2) 1PSC14. PSC Parcel No. 14, containing approximately 8.25 acres and (3) 1PSC16. PSC Parcel No. 16, containing approximately 180.6 acres.

(b) Each parcel may be subdivided and sold in parts; however, all sales shall be accomplished through public auction, the terms of which shall be to achieve the highest price for such parcels whether in whole or in part: Provided, That prior to such action the board of trustees shall have the properties appraised separately by two licensed appraisers and shall not sell the property for less than the average of the appraisals: Provided, however, That in the event of sale of all or part to the government of the United States of America, public auction shall not be required and sale price may be negotiated at or above the average of two separate valuations by licensed appraisers.

(c) Prior to public auction, the board of trustees shall schedule a public hearing to be held at a reasonable time and place within the county to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the college's representative appointed pursuant to this subsection. The board of trustees shall cause to be published a notice of the required public hearing. The notice shall be published as a Class II legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code and the publication area shall be the county in which the affected land is located. The public hearing shall be held no earlier than the fourteenth successive day following the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected land. In addition thereto, the board of trustees shall cause a copy of the required notice to be posted in a conspicuous place at the affected land for members of the public to observe. Such notice shall remain posted for two successive weeks prior to the date of the public hearing. The board of trustees shall appoint a representative of the college who shall conduct the required public hearing. The college's representative shall have full knowledge of all the facts and circumstances surrounding the proposed sale.

(d) The proceeds from the sale of the property referred to shall be deposited

in a special revenue account from which the board of trustees is hereby authorized to expend the fund for horticulture, agriculture and forestry facilities and programs at Potomac State College of West Virginia University: Provided, That the prioritized recommendations of the agriculture department advisory committee shall be considered by the agriculture department faculty and president of the college in the expenditure of the proceeds: Provided, however, That the advisory committee shall include one member each representing agricultural education, animal or dairy science, forestry, horticulture, and veterinary medicine, of which three shall be alumni of the agriculture department at the college. (1992, c. 61.)

§ 18B-2-8. Consortium of comprehensive child development centers; establishment and operation of a consortium of comprehensive child development centers.

(a) There is hereby established a consortium of comprehensive child development centers under the auspices of the board of trustees and under the direction and administration of the vice chancellor for health sciences. The goals of the consortium include, but are not limited to:

(1) Recommending a comprehensive diagnostic and technical support system to assist faculty and students in providing educational programs for students with disabilities;

(2) Providing a system for the comprehensive interdisciplinary diagnosis, treatment and follow-up of children and young adults with special needs and their families;

(3) Offering programs for the training of parents and families;

(4) Creating significant links between disciplines, departments, schools, colleges, universities and agencies;

(5) Providing all services (clinical, training, technical assistance and consultation) at child development centers and at strategically planned outreach sites, including institutions of higher education;

(6) Planning and implementing a statewide system of care for children with special needs and their families;

(7) Providing family-centered, community-based, culturally sensitive, coordinated care;

(8) Assuring interdisciplinary, interagency cooperation;

(9) Linking community-based health and educational services with institutions of higher education;

(10) Establishing a statewide comprehensive diagnostic support team and advisory boards at each center composed of agency representatives, physicians, education providers, center personnel, parents and others; and

(11) Facilitating significant parent and family participation, including parents as members of the statewide team and representing a majority of the membership of each center's advisory boards.

(b) Subject to appropriations by the Legislature, the board of trustees is

authorized and directed to establish at least four comprehensive child development sites at existing university health science centers located at Morgantown, Charleston, Huntington and Lewisburg. Planning of at least these four centers and the establishment of advisory boards shall be completed by the first day of July, one thousand nine hundred ninety-three. The board of trustees shall establish at least these four sites prior to the first day of January, one thousand nine hundred ninety-four.

The board of trustees may enter into a contractual relationship with each child development center, which shall be in accordance with laws that apply to publicly funded partnerships with private, nonprofit entities and the provisions of section three [§ 18B-5-3], article five of this chapter. (1993, c. 47.)

§ 18B-2-9. West Virginia University institute of technology.

(a) Notwithstanding any other provisions of this code to the contrary, the authority to establish, maintain and operate West Virginia institute of technology is hereby transferred to the board of trustees effective the first day of July, one thousand nine hundred ninety-six. West Virginia institute of technology shall henceforth be known as West Virginia university institute of technology and shall be operated as a regional campus of West Virginia university under the same procedures, policies, rules and practices utilized by West Virginia university and the board of trustees in operating West Virginia university at Parkersburg and Potomac state college of West Virginia university.

(b) Notwithstanding any other provisions of this code to the contrary and notwithstanding the resource allocation policy of the board of trustees, in allocating funds to the institutions under its jurisdiction, the board of trustees, through the first day of July, two thousand one, shall ensure that each institution receives no less than the amount of funds that each institution would have received if West Virginia institute of technology had not been transferred to the jurisdiction of the trustees.

(c) Title to all property previously transferred to or vested in the board of directors for the exclusive use or benefit of West Virginia institute of technology is hereby transferred to the board of trustees. Each valid agreement, obligation or claim entered into or incurred by the board of directors on behalf of West Virginia institute of technology is hereby transferred to the board of trustees.

(d) Revenues of West Virginia institute of technology previously pledged to pay off the indebtedness of revenue bonds issued by the board of directors shall continue to be paid to the board of directors until the existing debt is fully paid. An annual payment of three hundred seventy-three thousand eighty-nine dollars for each of the years remaining on the present system bond issue of the board of directors shall constitute the debt of West Virginia university institute of technology to the board of directors under this subsection. If the board of directors approves, the board of trustees or West Virginia university institute of technology may discharge this indebtedness through alternative payment plans or methods, including prepayment discounted appropriately.

(e) To compensate the other state college institutions for the amount that would have been reallocated under the resource allocation policy of the board of directors if West Virginia institute of technology had remained under the jurisdiction of the board of directors, West Virginia university institute of technology shall transfer two hundred eighty-four thousand five-hundred twenty-five dollars to the board of directors for each of the fiscal years one thousand nine hundred ninety-six—ninety-seven, one thousand nine hundred ninety-seven—ninety-eight, and one thousand nine hundred ninety-eight—ninety-nine.

(f) West Virginia university institute of technology shall retain the same or a lower type of southern regional education board classification as an institution until at least the first day of July, two thousand.

(g) Until at least the first day of July, one thousand nine hundred ninety-seven, West Virginia university institute of technology shall retain the same promotion and tenure process in place prior to the transfer effectuated by this section.

(h) For the purposes of meeting the requirements of section one [§ 18B-7-1], article seven of this chapter, West Virginia university institute of technology, West Virginia university at Parkersburg, and Potomac state college of West Virginia university shall be considered separate institutions of higher education.

(i) Any new moneys appropriated to or received by West Virginia university institute of technology shall be allocated to West Virginia university institute of technology under the policies of the board of trustees.

It is the intent of the Legislature in implementing the merger of West Virginia university and West Virginia institute of technology that new graduate programs offered by West Virginia university at the West Virginia university institute of technology will not duplicate existing graduate programs currently offered by Marshall university and the West Virginia graduate college. Before any graduate programs are offered by West Virginia university at the West Virginia university institute of technology, they must be approved by the board of trustees. (1996, c. 119.)

ARTICLE 2A.

INSTITUTIONAL BOARDS OF GOVERNORS.

Sec.
18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.
18B-2A-2. Meetings.
18B-2A-3. Supervision of governing boards; promulgation of rules.
18B-2A-4. Powers and duties of governing boards generally.

Effective dates. — Acts 2000, c. 100, provided that the act take effect June 17, 2000.

MICHIE'S WEST VIRGINIA CODE ANNOTATED

VOLUME 7A

2001 Replacement Volume

2004 SUPPLEMENT

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Editor's notes. — This section was originally enacted as 18B-1B-10; because a section numbered 18B-1B-10 already existed, this section was subsequently renumbered as 18B-1B-12.

Effective dates. — Acts 2004, c. 123, provided that the act take effect March 21, 2004.

ARTICLE 2.

UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§ 18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office [See editor's note].

Cited in Yates v. University of W. Va. Bd. of Trustees, 209 W. Va. 487, 549 S.E.2d 681, 2001 W. Va. LEXIS 50 (2001).

ARTICLE 2A.

INSTITUTIONAL BOARDS OF GOVERNORS.

Sec.		Sec.	
18B-2A-1.	Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.	18B-2A-5.	Public school service program.
18B-2A-4.	Powers and duties of governing boards generally.	18B-2A-6.	University status for public baccalaureate institutions of higher education.

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

(a) A board of governors is continued at each of the following institutions: Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(b) For the community and technical college of Shepherd and New River community and technical college the institutional board of advisors remains in place until the institution achieves independent accreditation as provided in section eight [§ 18B-3C-8], article three-c of this chapter.

(1) As long as the institutional board of advisors remains in place, the chairperson of the board of advisors serves as an ex officio, voting member of the board of governors of the sponsoring institution;

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 18B, ARTICLE 3, OF THE WEST VIRGINIA CODE, AND CHAPTER 18B, ARTICLE 3, OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

for any public community and technical college, branch, center, regional center, or other delivery site with a community and technical college mission.

(2) To require the entities to seek independent accreditation through the college.

(3) To allocate state budgetary resources to the entity; and

(4) With the advice and consent of the commission, to appoint the administrative heads of institutions governed by the governing board. (2001, c. 110.)

§ 18B-2C-7. Powers and duties of vice chancellor as president of the West Virginia community and technical college.

The vice chancellor serves as the acting president of the college until such time as a president is selected as prescribed by law. As acting president, the vice chancellor has all the powers and duties assigned by law, by the commission or by the governing board. In addition, the vice chancellor shall continue to exercise all other powers and duties assigned by law or by the commission. (2001, c. 110.)

ARTICLE 3.

BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM [SEE EDITOR'S NOTE].

Sec.
18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
18B-3-2. Meetings and compensation.
18B-3-3. Additional duties of board of directors.
18B-3-3a, 18B-3-4. [Repealed.]
18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.
18B-3-6. [Repealed.]
18B-3-7. Legislative findings; study by joint ommittee on government and finance.

Editor's notes. — For provisions regarding the termination of the board of directors, see § 18B-3-1(e) and (f).

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§ 18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office [See editor's note].

(a) The board of directors of the state college system shall consist of sixteen persons, of whom one shall be the chancellor of the university of West Virginia board of trustees, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one

shall be the chair of the joint commission for vocational-technical-occupational education, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other ten directors shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate. On or after the tenth day of March, one thousand nine hundred ninety-six, the board shall be reconstituted and all terms of members appointed by the governor prior to the tenth day of March, one thousand nine hundred ninety-six, shall expire upon the appointment by the governor of all the directors required to be appointed by this section. The governor shall make appointments required by this section no later than the fifteenth day of March, one thousand nine hundred ninety-six.

Each of the directors appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field. The relative enrollments of baccalaureate and community and technical students in the state college system shall be considered by the governor when making such appointments and the governor shall use his or her best efforts to achieve a balance among the members who reflect the various interests, goals and concerns reflected by the relative enrollments.

Except for the ex officio directors, no person shall be eligible for appointment to membership on the board of directors who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, or an appointee or employee of the board of trustees or board of directors: Provided, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of directors. Of the ten directors appointed by the governor from the public at large, not more than five thereof shall belong to the same political party and at least three directors of the board shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint ten directors as soon after the tenth day of March, one thousand nine hundred ninety-six, as is practicable and the original terms of all directors shall commence on that date. The terms of the directors appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, three shall be appointed to terms of two years, three shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years.

The governor shall appoint a director to fill any vacancy among the ten directors appointed by the governor, by and with the advice and consent of the Senate, which director appointed to fill such vacancy shall serve for the

unexpired term of the vacating director. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All directors appointed by the governor shall be eligible for reappointment: Provided, That a person who serves as a director or trustee during all or any part of two consecutive terms beginning after the first day of March, one thousand nine hundred ninety-six, shall be ineligible to serve as a director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a director, each director shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(d) No director appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of the state elective officers.

(e) The board of directors is abolished the thirtieth day of June, two thousand.

(f) On the first day of July, two thousand, there is transferred to the interim governing board all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both. (1989, c. 64; 1993, c. 47; 1995, c. 99; 1996, c. 119; 2000, c. 100.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, added (e) and (f).

Editor's notes. — For provisions regarding the termination of the board of directors, see subsections (e) and (f) supra.

§ 18B-3-2. Meetings and compensation.

(a) The board of directors shall hold at least ten meetings in every fiscal year, including an annual meeting each June: Provided, That a meeting for the purpose of selecting the first chairman shall be held during March, one thousand nine hundred ninety-six. Except for the annual meeting, which may be held at a location anywhere in the state, the meetings shall be held on different campuses of institutions in the state college system on a rotating basis or at the central office. The directors may set aside time at these meetings held at the campuses to afford administrators, faculty, students and classified staff at these institutions an opportunity to discuss issues affecting these groups. The directors shall hold at least one meeting each year with the advisory council of faculty, the advisory council of students and the advisory council of classified employees, each of these bodies to be met with separately. Except as otherwise provided in this section, meetings shall be held on such

dates and at such places as the directors may prescribe. In addition to the statutorily required meetings, the directors may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the written request of at least five appointed directors.

Of the thirteen voting members of the board of directors, seven shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the directors.

(b) The directors shall be reimbursed for actual and necessary expenses incident to the performance of such duties, upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the directors. (1989, c. 64; 1996, c. 119.)

§ 18B-3-3. Additional duties of board of directors.

(a) The board of directors of the state college system shall govern the state college system.

(b) The board of directors shall determine programs to be offered by state institutions of higher education under its jurisdiction, shall clarify the missions of the institutions under its jurisdiction and, in so doing, ensure that Fairmont state and West Virginia institute of technology are given primary responsibility for technical preparation teacher training programs.

(c) The board of directors shall govern state college system community and technical colleges in accordance with the provisions of section three-a [§ 18B-3-3a] of this article.

(d) The board of directors shall adopt a faculty salary program with an overall goal of attaining salaries equal to the average faculty salaries within similar groups of disciplines and program levels at comparable peer institutions within member states of the southern regional education board. (1989, c. 64; 1991, 2nd Ex. Sess., c. 20; 1993, c. 47; 1995, c. 99.)

§§ 18B-3-3a, 18B-3-4.

Repealed by Acts 2000, c. 100.

Editor's notes. — Former § 18B-3-3a (enacted by Acts 1995, c. 99) and former § 18B-3-4 (enacted by Acts 1989, c. 64), which provided for the establishment, implementation and administration of community and technical college education, were repealed by § 18B-1A-8 (enacted by Acts 2000, c. 100, effective June 17, 2000).

§ 18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

(a) It shall be unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as such shall

be defined by the board of directors by rule promulgated in accordance with article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, from the West Virginia board of directors in the manner and on the terms herein prescribed.

All private training or educational institutions, schools or academies or other organizations shall apply for a permit from the board of directors of the state college system on forms provided by the board. This section does not apply to private organizations that offer only tax return preparation courses. Each initial application shall be accompanied by a nonrefundable fee of two thousand dollars. The board may also assess an additional fee based on any additional expense required to evaluate the application. The board shall make a determination on the initial permit application within ninety days after receipt of the application and fee. An applicant for an initial permit shall show proof at the time of filing an application that adequate facilities are available and ready for occupancy and that all instructional equipment, books and supplies and personnel are in place and ready for operation. A representative of the board shall make an on-site visit to all new applicants' facilities to confirm its readiness for operation prior to issuance of the initial permit if the facilities are located in West Virginia.

A school is considered to be established under the provisions of this article on the date it first begins to lawfully operate. An established school is not required to reapply for a permit as a result of changes in governance; administration; ownership; or form of operation. After the first permit year an annual fee of five hundred dollars is imposed on each school for each campus it operates in this state.

(b) Each application shall be accompanied by a surety bond in the penal sum of thirty-five thousand dollars for any school which has its physical facilities located in this state and which has operated in this state for at least ten years: Provided, That if the school has changed ownership within the last ten years by transfer of ownership control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the surety bond shall continue in the penal sum of thirty-five thousand dollars: Provided however, That any school which has operated in West Virginia for less than ten years, including those schools which have changed ownership within the last ten years except those schools noted above who have transferred ownership control to a spouse, parent, sibling, child or grandchild of the previous owner within the last ten years and any school located in another state which applies for a permit hereunder, shall provide a surety bond of fifty thousand dollars: Provided further, That any school may be required to increase its bond to one hundred fifty thousand dollars if its accreditation is terminated for cause or if the school's institutional eligibility under the Higher Education Act of 1965, as amended, has been terminated for cause: And provided further, That expiration, nonrenewal or voluntary relinquishment of accreditation or institutional eligibility under said act, or failure to meet the requirements of one or more programs under said act, shall not be deemed a termination for cause.

In addition, any school may be required to increase its bond to an amount not to exceed four hundred thousand dollars if, in accordance with the standards of the American institute of certified public accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt, and the board of directors determines an increased bond is reasonably necessary to protect the financial obligations legally due the students then enrolled at the institution. A school may be required to maintain the increased bonding requirements described above until all students attending classes at the date of termination either graduate or withdraw. The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student's enrollment; failure of the school to meet contractual obligations; or failure of the school to meet the requirements of this section. The bond shall be given by the school itself as a blanket bond covering all of its representatives. The surety on any such bond may cancel the same upon giving thirty days' notice in writing to the principal on said bond and to the state board of directors and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

(c) A permit shall be valid for one year corresponding to the effective date of the bond and, upon application, accompanied by the required fee and the surety bond as herein required, may be renewed. All fees collected for the issuance or renewal of such permit shall be deposited in the state treasury to the credit of the board of directors.

The board may refuse a permit to any school if the board finds that the school engages in practices which are inconsistent with this section or with rules and regulations issued pursuant thereto. A permit issued hereunder, upon fifteen days' notice and after a hearing, if a hearing is requested by the school, may be suspended or revoked by the board of directors for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia, or for violation of or failure to comply with any provision of this section or with any regulation of the state board of directors pertinent thereto. Prior to the board taking any adverse action, including refusal, suspension or revocation of a permit, the school shall be given reasonable opportunity to take corrective measures. Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

(d) All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the board of directors on forms furnished by the board and shall provide such appropriate information as the board reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the board of directors a list of its official representatives. Each school shall be issued a certificate of identification by the board of directors for each of its official representatives.

(e) The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school nor any represen-

tative of a school shall make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the state of West Virginia, state board of directors or any other department or agency of the state.

The board of directors is hereby authorized to adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas and specialized associate degrees, which standards may include curriculum, personnel, facilities, materials and equipment: Provided, That in the case of accredited correspondence, business, occupational and trade schools under permit on the first day of July, one thousand nine hundred seventy-nine, having their physical facilities located in this state, and which are accredited by the appropriate nationally recognized accrediting agency or association approved by the United States department of education, the accrediting agency's standards, procedures and criteria shall be accepted as meeting applicable laws, standards and rules of the board of directors: Provided, however, That institutions, which are institutionally accredited by accrediting agencies that are recognized by the United States department of education to establish academic standards for postsecondary education, may offer postsecondary educational programs leading to (and upon successful completion of such programs award graduates) certificates, diplomas and associate degrees in accordance with the academic standards required by such accrediting agency. If a review undertaken by the board indicates there may be deficiencies in the academic standards the institution maintains in its educational programs, that are of such a material nature as to jeopardize continued accreditation, the board shall notify the institution. If the board and the institution are unable to agree on the deficiencies or the steps necessary to correct the deficiencies, the board shall consult with the institution's accrediting agency regarding an academically appropriate resolution, which resolution may include a joint on-site review by the board and the accrediting agency. The board may also review the academic standards of unaccredited institutions and may require such institutions to maintain recognized academic standards that are reasonably appropriate to the nature of the institution and the training offered. The board of directors may authorize an investigation of written student complaints alleging a violation of this section, board rules, or accreditation standards and may take appropriate action based on the findings of such an investigation. All evaluations or investigations of correspondence, business, occupational and trade schools, and actions resulting from such evaluations or investigations, shall be made in accordance with rules promulgated by the board of directors pursuant to article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code.

For the purposes of this section, proprietary schools that award specialized associate degrees shall be defined as institutions of higher education, and specialized associate degrees shall mean degrees awarded by such institutions pursuant to a program of not less than two academic years: Provided, That nothing herein shall be construed to qualify the said proprietary schools for additional state moneys not otherwise qualified for under other provisions of this code.

(f) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States department of education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law and which is now in effect or promulgated hereafter by the board of directors (or other agency with jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an act of the Legislature under the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code.

(2) Notwithstanding any other provision of this section or other law to the contrary, the institution's accrediting agency standards, procedures and criteria shall be accepted as the standards and rules of the board of directors (or other agency with jurisdiction) and as meeting other law or legal requirements relating to the operation of proprietary institutions which such board or other agency has the legal authority to enforce under any section of the code or other law: Provided, That nothing in this section shall be construed to deny students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.

(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress shall be measured and reported in credit hours and all reports/documents filed on a credit hour basis unless the institution notifies the board that it utilizes clock hours as its unit of measurement.

(g) A representative of any school who solicits, sells or offers to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more that two hundred dollars per day per violation, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned. No correspondence, business, occupational or trade school shall maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The attorney general or any county prosecuting attorney, at the request of the board of directors or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

(h) In regard to institutions operating under this section, all substantive standards and procedural requirements established by the board of directors (or the West Virginia state program review entity or other agency with jurisdiction over institutions operating hereunder) shall meet all substantive and procedural standards of due process relating to the protection of an individual citizen's property rights as provided for under the United States Constitution, and shall follow the substantive standards and procedural

requirements established by or under authority of this section. (1989, c. 64; 1992, c. 185; 1994, c. 54.)

Editor's notes. — The Higher Education Act of 1965, referred to in subsection (b), is codified generally at 20 USCS, with portions compiled at 42 USCS.

§ 18B-3-6.

Repealed by Acts 2000, c. 100.

Editor's notes. — Former § 18B-3-6 (enacted by Acts 1999, c. 107), pertaining to increasing flexibility for freestanding community and technical colleges, was repealed, effective July 1, 2000, by § 18B-1A-8 (enacted by Acts 2000, c. 100, effective June 17, 2000).

§ 18B-3-7. Legislative findings; study by joint ommittee on government and finance.

(a) The Legislature recognizes that it is in the best interest of the state to have effective and comprehensive higher education programs. It is critical that there be a system for the delivery of high quality community and technical college education because of its importance to the economic and cultural well-being of state residents.

(b) The Legislature finds that a need exists to strengthen the public community colleges so that they are able to respond better to the economic needs of the state for a highly trained, competent work force. Therefore, the Legislature has sought, through passage of legislation, to restructure and refocus community and technical college education for the purpose of establishing programs that function well with the public schools and four-year colleges, that make maximum use of resources, that encourage citizens to pursue a lifetime of learning, that serve as instruments of economic development, and that have the independence and flexibility to respond quickly to changing needs.

(c) The Legislature finds that, although great progress has been made on reaching some of the established goals, the purposes for which community and technical college education was created have not been fulfilled and many of the goals established have not been met.

(d) The Legislature further finds that a need exists to clarify the missions of public institutions of higher education, to consider the equity and effectiveness of current funding methods and to consider methods of equitably offering access to associate, baccalaureate and graduate education programs at institutions throughout the state.

(e) It is the responsibility of the Legislature to make the best use of available resources and to provide a blueprint that will meet goals established for public higher education. Therefore, the joint committee on government and finance shall authorize a study for the purpose of making specific and detailed recommendations to the Legislature. The recommendations shall be delivered to the Legislature by the first day of January, two thousand. The study shall include, but may not be limited to, the following:

(1) Recommendations on clarifying the missions of higher education institutions, directing resources to programs that meet the current and future work force needs of the state and distributing available revenues in an equitable fashion that enables each state institution of higher education to fulfill its mission;

(2) A review of state statutes and the rules, policies, practices and procedures of the higher education governing boards that may hinder effective delivery of high quality education programs and recommendations on how any statute or policy should be changed;

(3) A review of and recommendations on the higher education resource allocation model and resource allocation policies, established pursuant to section two [§ 18B-5-2], article five of this chapter, to determine a new or modified model for funding public higher education in West Virginia. The recommendations shall include a method of funding reimbursement based on delivering credit and noncredit course work, eliminating or reducing the funding and regulatory differences between credit and noncredit courses to facilitate students moving between the two types of programs, and allowing faculty more flexibility to teach in both credit and noncredit program areas;

(4) Recommendations on a model for delivery of graduate education that makes effective use of resources available at four-year institutions under the jurisdiction of the board of directors;

(5) Recommendations on a model for delivery of baccalaureate education that makes effective use of resources available at the freestanding community colleges under the jurisdiction of the board of directors;

(6) A review of facility and maintenance needs of all state institutions of higher education and recommendations for addressing those needs;

(7) Recommendations on an appropriate model or models for governance of public institutions of higher education in the state; and

(8) Recommendations on the most effective and efficient model to be used in creating a system of public community and technical colleges in West Virginia. (1999, c. 107.)

Effective dates. — Acts 1999, c. 107 provided that the act take effect from passage (March 21, 1999).

ARTICLE 3A.

WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.

§§ 18B-3A-1 through 18B-3A-5.

Repealed by Acts 2001, c. 110.

Editor's notes. — Former article 18B-3A, §§ 18B-3A-1 through 18B-3A-5 (enacted by Acts 2000, c. 100), concerning the West Virginia Joint Commission for Vocational-Technical-Occupational Education, was repealed by Acts 2001, c. 110, effective July 1, 2001.

MICHIE'S WEST VIRGINIA CODE ANNOTATED

VOLUME 7A

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§ 18B-2C-4. Authority of council in creating West Virginia community and technical college.

(a) Subject to the provisions of subsection (c), section three [§ 18B-2C-3] of this article, if the council makes a determination that one or more of the conditions exists, then the council is authorized to create the West Virginia community and technical college.

(b) As soon as practicable after the council determines that the college should be created, the council shall notify the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability of the proposed actions. The council shall conduct a study regarding the procedures, findings and determinations considered necessary prior to any creation of the college and shall report its findings to the legislative oversight commission on education accountability. The council may not create the college prior to the report being received by the legislative oversight commission on education accountability.

(c) On or before the first day of December of the year in which the college is created, the council shall certify to the legislative oversight commission on education accountability proposed legislation to accomplish the purposes of this article for those matters requiring statutory change. (2001, c. 110; 2004, c. 92.)

Effect of amendment of 2004. — Acts 2004, c. 92, effective March 13, 2004, rewrote the section.

ARTICLE 3.

BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM [SEE EDITOR'S NOTE].

§ 18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

Code of State Rules References. — Correspondence, business, occupational and trade schools, 131 CSR 3, effective April 3, 1995.

ARTICLE 3C.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

Sec.		Sec.	
18B-3C-2.	Purposes of article.	18B-3C-4.	Community and technical college consortia planning districts.
18B-3C-3.	Essential conditions for community and technical college programs and services.		

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 18B, ARTICLE 10, OF THE WEST VIRGINIA CODE, AND CHAPTER 18B, ARTICLE 10, OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

period the employee shall receive a written evaluation of his or her performance. The employee's supervisor shall meet with the employee and explain the contents of said evaluation and whether the employee is being offered regular employment. (1994, c. 55; 1995, c. 99.)

ARTICLE 10.

FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

Sec.
18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.
18B-10-1a. Resident tuition rates for national guard members.
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Sec.
18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.
18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.
18B-10-10. Disposition and use of student union fees; issuance of revenue bonds.
18B-10-11. Fees and money derived from athletic contest.
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18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.
18B-10-14. Bookstores.
18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.
18B-10-16. Disposition of funds in state treasury.

§ 18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one or more of the following:

(1) Health service fees;

(2) Infirmary fees;

(3) Student activities, recreational, athletic and extracurricular fees, which fees may be used to finance a students' attorney to perform legal services for students in civil matters at such institutions: Provided, That such legal services shall be limited only to those types of cases, programs or services approved by the administrative head of such institution where such legal services are to be performed; and

(4) Graduate center fees and branch college fees, or either, if the establishment and operations of graduate centers or branch colleges are otherwise authorized by law.

(b) All fees collected at any graduate center or at any branch college shall be paid into special funds and shall be used solely for the maintenance and operation of the graduate center or branch college at which they were collected: Provided, That the commission shall set tuition and fee goals for residents at each institution after examining tuition and fees at the institutions' peers: Provided, however, That, effective the first day of July, two thousand one, tuition and fees for nonresident, undergraduate students shall, at a minimum, cover actual instructional costs as determined in accordance with commission policy: Provided further, That students enrolled in undergraduate courses offered at off-campus locations shall pay an off-campus instruction fee and shall not pay the athletic fee and the student activity fee.

(c) The off-campus instruction fee shall be used solely for the support of off-campus courses offered by the institution. Off-campus locations for each institution shall be defined by the appropriate governing board. The schedule of all fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board, and the board shall file with the legislative auditor a certified copy of such schedule and changes.

(d) In addition to the fees mentioned in the preceding paragraph, each governing board may impose and collect a student union building fee. All such building fees collected at an institution shall be paid into a special student union building fund for such institution, which is hereby created in the state treasury, and shall be used only for the construction, operation and maintenance of a student union building or a combination student union and dining hall building or for the payment of the principal of and interest on any bond issued to finance part or all of the construction of a student union building or a combination student union and dining hall building or the renovation of an existing structure for use as a student union building or a combination student union and dining hall building, all as more fully provided in section ten [§ 18B-10-10] of this article. Any moneys in such funds not needed immediately for such purposes may be invested in any such bonds or other securities as are now or hereafter authorized as proper investments for state funds.

(e) The boards shall establish the rates to be charged full-time students enrolled during a regular academic term.

(1) For fee purposes, a full-time undergraduate student is one enrolled for twelve or more credit hours in a regular term, and a full-time graduate student is one enrolled for nine or more credit hours in a regular term.

(2) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour, and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(3) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(f) All fees are due and payable by the student upon enrollment and registration for classes except as provided for in this subsection:

(1) The governing boards shall permit fee payments to be made in up to three installments over the course of the academic term: Provided, That all fees must be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees: Provided, That the governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that the finances of any student were affected adversely by a legal work stoppage that commenced on or after the first day of January, one thousand nine hundred ninety-three, it may allow the student an additional six months to pay the fees for any academic term: Provided, That the governing board shall determine on a case-by-case basis if the finances of a student were affected adversely.

(g) On or before the first day of July, two thousand one, the chancellor for higher education shall review policy series twenty-two of the governing boards, related to assessment, payment and refund of fees and determine whether a new rule should be adopted regarding the refund of any fees upon the voluntary or involuntary withdrawal from classes of any student. The rules shall comply with all applicable state and federal laws and shall be uniformly applied throughout the system.

(h) In addition to the fees mentioned in the preceding subsections, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group: Provided, That the students at such institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government: Provided, however, That such fees shall not be used to finance litigation against the institution.

(i) Any proposed fee increase which would become effective during the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, and which has been approved by the governing board, shall then be submitted by the governing board to the secretary for education and the arts for approval. Such approval shall be granted only upon the certification that such institution requesting a fee increase is in compliance with the strategic plans required to be submitted, pursuant to section one-b [§ 18B-1-1b], article one of this chapter. Notice, in the form of a report, shall be provided by the chancellor to the legislative oversight commission on education accountability describing such fee increases and showing how such increases compare with the average tuition and fees charged at comparable peer institutions in member states of the southern regional education board.

(j) Effective the first day of July, two thousand one, tuition and fees rates shall be determined in accordance with subsections (k), (*l*) and (m) of this section.

(k) Effective the first day of July, two thousand one, institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with a revised tuition policy adopted by the respective governing boards and approved by the commission. The revised tuition policy shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs; and

(3) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(*l*) No penalty shall be imposed by the commission upon any institution based upon the number of nonresidents who attend the institution unless the commission determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of the resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission on the numbers of out-of-state residents and such other enrollment information as the commission may request.

(m) Tuition and fee increases of the governing boards are subject to rules adopted by the commission pursuant to subsection (a), section four [§ 18B-1B-4], article one-b of this chapter. (1989, c. 64; 1993, c. 47; 1995, c. 99; 2000, c. 100; 2001, c. 110.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, substituted "education" for "educational" in the section heading; in the second sentence in (a), substituted "in accordance with commission rule" for "in accordance with board rule" and inserted the third proviso; in (d)(1), deleted "The payments shall include interest at a rate set by the governing board" preceding the proviso; rewrote (e); deleted former (f), which required the governing boards to establish legislative rules using the fee structure or other penalties to provide a disincentive for students to register for classes in excess of the typical full-time course load, and redesignated former (g) and (h) as (f) and (g); in present (g), rewrote the first sentence, substituted "secretary" for "chancellor" in the third sentence, and deleted the former last sentence, which read, "Effective the first day of July, two thousand one, tuition and fees rates shall be determined in accordance with subsection (h), subsection (i) and subsection (j) of this section"; added present (h) through (j); and made other, minor changes.

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, rewrote the section.

§ 18B-10-1a. Resident tuition rates for national guard members.

(a) The term "resident" or "residency", or any other term or expression used to designate a West Virginia resident student, when used to determine the rate of tuition to be charged students attending community colleges and state-related and state-owned institutions of higher education shall be construed to include members of the national guard who are not residents of West Virginia but who are active members of a national guard unit in West Virginia who are participating in the national guard education services program.

(b) A member of the national guard who qualifies as a resident, as that term is defined in subsection (a) of this section, on the first day of the semester or term of the college or institution, shall be charged resident tuition rates.

(c) The provisions of this section apply at the beginning of the semester or term immediately following the effective date of this section. (1999, c. 113.)

Editor's notes. — Concerning the reference in (c) to "the effective date of this section," Acts 1999, c. 113, which enacted this section, provided that the act take effect July 1, 1999.

Effective dates. — Acts 1999, c. 113 provided that the act take effect July 1, 1999.

§ 18B-10-2. Higher education resource fee.

In addition to the fees specifically provided for in section one [§ 18B-10-1] of this article, all students enrolled for credit at a state institution of higher education shall pay a higher education resource fee. The commission shall fix the fee rates for the various institutions and classes of students under its jurisdiction and may from time to time change these rates. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and is not limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

Ninety percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services. Up to ten percent of the fee collections shall be deposited in a special fund and expended or allocated by the commission to meet general operating expenses of the commission or to fund statewide programs: Provided, That the board shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article five [§§ 18C-5-1 et seq.], chapter eighteen-c of this code.

The commission shall, on or before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee. (1989, c. 64; 2000, c. 100.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, substituted "The commission" for "Each governing board" in the first and third paragraphs; in the second paragraph, substituted "Ninety percent" for "Eighty percent" at the beginning of the first sentence and, in the second sentence, substituted "Up to ten percent of the fee collections ...statewide programs" for "The remaining twenty percent of fee collection shall be deposited in a special fund and expended or allocated by the appropriate governing board to meet general operating expenses, excluding personal services, of the state university system or state college system from which the fees were collected" and substituted "article five, chapter eighteen-c of this code" for "article twenty-two-b, chapter eighteen of this code".

§ 18B-10-3. Faculty improvement fee.

In addition to the fees specifically provided for in sections one and two [§§ 18B-10-1 and 18B-10-2] of this article, all students enrolled for credit at a state institution of higher education shall pay a faculty improvement fee. Each governing board shall fix the fee rates for the various institutions and classes of students under its jurisdiction and may from time to time change these rates: Provided, That the fee for each class of students shall be uniform throughout the state and shall be no less than fifteen dollars per semester for residents and no less than fifty dollars per semester for out-of-state students. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education.

All faculty improvement fees collected shall be deposited in a special fund in the state treasury. Each governing board shall use such fees, including any fees on deposit as of the effective date of this section [July 1, 1989], to the extent available to implement article eight of this chapter.

Each governing board shall, before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for each of its institutions. (1989, c. 64.)

§ 18B-10-4. Medical education fee.

In addition to the fees specifically provided for in sections one [§§ 18B-10-1 to 18B-10-3], two and three of this article, all medical students enrolled for credit at the West Virginia university school of medicine, Marshall university school of medicine and the West Virginia school of osteopathic medicine shall pay a medical education fee. The board of trustees shall fix the fee rates for students at each institution and may from time to time change these rates. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one [§ 18B-10-1] of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education. Medical education fees collected shall be deposited in a special revenue account which is hereby created in the state treasury for the school at which the fees are collected and shall be used by the school to offset general operating costs: Provided, That the board of trustees shall deposit a portion of the total fees collected therein into the health education student loan fund account in accordance with the provisions of article three [§§ 18C-3-1 et seq.], chapter eighteen-c of this code. Before the first day of July of each year, the board of trustees shall provide the legislative auditor with a report of the projected fee collections for each of the schools of medicine. (1989, c. 64; 1991, 2nd Ex. Sess., c. 20.)

§ 18B-10-4a. Health professions education fee.

In addition to the fees specifically provided for in sections one, two, three and four [§§ 18B-10-1 to 18B-10-4] of this article, all students enrolled for credit at the West Virginia University health sciences center, Marshall University school of medicine and the West Virginia school of osteopathic medicine, shall pay a health professions education fee. The board of trustees shall fix the amount of the fee and may from time to time change that amount. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education. All moneys collected from the health professions education fees shall be deposited in a special revenue account for the respective school from which collection is made, said accounts shall be hereby created in the state treasury for the West Virginia health sciences center, Marshall University school of medicine, and the West Virginia school of osteopathic medicine. The moneys in such fund shall be used to offset general operating costs for health sciences education in this state. Before the thirty-first day of June of each year, the board of trustees shall provide the legislative auditor with a report of the projected fee collections during the next fiscal year and a report of fee expenditures for the preceding fiscal year. (1989, c. 64.)

§ 18B-10-4b. Additional fee waivers for health sciences and technology academy programs.

(a) In addition to the number of fee waivers permitted in sections five and six [§§ 18B-10-5 and 18B-10-6] of this article for undergraduate, graduate and professional schools, each state institution of higher education may waive all fees or any part thereof for students who are residents of West Virginia and who successfully complete the health sciences and technology academy affiliated programs, as defined in chapter eighteen-b, article one, section two [§ 18B-1-2] of the code of West Virginia.

(b) For purposes of section four-b [§ 18B-10-4b], article ten, chapter eighteen-b of this code, "Health Sciences and Technology Academy Programs" means programs for health sciences to assist junior high and high school students, in conjunction with their parents and teachers, to enhance their knowledge and abilities in subject matters which would further a career in the field of health sciences. (1997, c. 87.)

§ 18B-10-5. Fee waivers — Undergraduate schools.

Each governing board may establish, from time to time, fee waivers for students in undergraduate studies at institutions under its jurisdiction entitling recipients to waiver of enrollment, tuition, registration, higher education resource and other fees subject to the following conditions and limitations:

(1) No state educational institution may have in effect at any time undergraduate fee waivers in a number which exceeds five percent of the number of

full-time equivalent undergraduate students registered during the fall semester of the immediately preceding academic year.

(2) Each undergraduate fee waiver shall entitle the recipient thereof to attend a designated state educational institution without payment of the enrollment, tuition, registration, higher education resource and other fees as may be prescribed by the governing board and be for a period of time not to exceed eight semesters of undergraduate study.

(3) The governing board shall make rules governing the award of undergraduate fee waivers, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of the fee waivers by the recipients and the rights and duties of the recipients in respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the governing board, and each board shall file with the legislative auditors a copy of the rules governing the award of the fee waivers and a list of the names of the recipients thereof. (1989, c. 64.)

§ 18B-10-6. Same — Professional and graduate schools.

In addition to the fee waivers heretofore authorized for undergraduate study by the provisions of section five [§ 18B-10-5] of this article, each governing board may establish from time to time fee waivers for study in graduate and professional schools under their jurisdiction, including medicine and dentistry, entitling the recipients to waiver of enrollment, tuition, registration, higher education resource and other fees, subject to the following conditions and limitations:

(1) West Virginia University may not have in effect at any time graduate and professional school fee waivers in a number which exceeds ten percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above ten percent, all graduate assistants employed by West Virginia University shall be granted a fee waiver. All other institutions of higher education may not have in effect at any time graduate and professional school fee waivers in a number which exceeds five percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above five percent, all graduate assistants employed by the other institutions shall be granted a fee waiver.

(2) Each graduate or professional school fee waiver shall entitle the recipient to waiver of the enrollment, tuition, registration, higher education resource and other fees as may be prescribed by the governing boards and be for a period of time not to exceed the number of semesters normally required in the recipient's academic discipline.

(3) The governing boards shall make rules governing the award of graduate and professional school fee waivers, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of the fee waivers

by the recipients and the rights and duties of the recipients in respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board, and each board shall file with the legislative auditor a copy of the rules governing the award of the fee waiver and a list of the names of the recipients thereof. (1989, c. 64.)

§ 18B-10-7. Tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty.

Each state institution of higher education shall permit any person to attend its undergraduate courses and classes if classroom space is available without charging such person any tuition or any fees, including those provided in sections two and three [§§ 18B-10-2 and 18B-10-3] of this article, if such person is the child or spouse of a law-enforcement officer as defined in section one [§ 30-29-1], article twenty-nine, chapter thirty of this code, a correctional officer at a state penal institution, a conservation officer, or a registered firefighter, and such officer or firefighter was killed in the line of duty while employed by the state or any political subdivision thereof, or such firefighter was a member of a volunteer fire department serving a political subdivision of this state: Provided, That the state institution of higher education may require such person to pay special fees, including any laboratory fees, if such fees are required of all other students taking a single or the particular course and may also require such person to pay for parking. The governing boards may promulgate rules for determining the availability of classroom space and other rules as it considers necessary to implement this section, including rules regarding qualifications for attendance, which shall not exceed the qualifications required of other persons.

The governing boards may also extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate. (1989, c. 64.)

§ 18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.

The board of trustees and the board of directors shall promulgate a joint rule in accordance with article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code that establishes a reduced tuition and fee program for senior citizens. The joint rule shall include at least the following:

(a) The program shall include one option for those who attend undergraduate and graduate courses without receiving credit and one option for individuals who attend undergraduate and graduate courses for credit;

(b) A participant under either option of the program shall meet the following requirements:

(1) The participant is a resident of West Virginia;

(2) The participant is sixty-five years of age or older;
(3) Classroom space is available; and
(4) The instructor of the class consents;
(c) A method of establishing priority for allowing a participant to attend a class or course;
(d) A determination of whether to require participants to pay special fees, including laboratory fees, if the fees are required of all other students;
(e) A determination of whether to require participants to pay for parking;
(f) For participants in the program under the no credit option:
(1) A grade or credit may not be given; and
(2) The total tuition and fees charged for each course or class, excluding laboratory and parking fees, may not exceed fifty dollars: Provided, That after the first day of July, two thousand four, the governing boards may by joint rule change the maximum fee; and
(g) For participants in the program under the for credit option, tuition and fee rates may not exceed fifty percent of the normal rates charged to state residents by the institution. (1999, c. 114.)

Effective dates. — Acts 1999, c. 114, provided that the act take effect June 10, 1999.

§ 18B-10-7b. Tuition waivers for high school graduates in foster care.

The governing boards shall make provision for institutions under their respective jurisdictions to award a tuition and fee waiver for undergraduate courses at state institutions of higher education for any student, beginning with incoming freshmen in the fall, two thousand, semester or term, who graduate from high school or pass the GED examination while in the legal custody of the state department of health and human resources. The student must be in foster care or other residential care for at least one year prior to the waiver award. If the foster care or other residential care is provided in another state, the student must first be returned to this state for waiver award eligibility.

To be eligible for a waiver award, a student must first: (1) Apply to and be accepted at the institution; and (2) apply for other student financial assistance, other than student loans, in compliance with federal financial aid rules, including the federal Pell grant.

Waiver renewal is contingent upon the student continuing to meet the academic progress standards established by the institution.

The waiver provided by this section for each eligible student may be used for no more than four years of undergraduate study. An initial waiver must be granted within two years of graduation from high school or passing the GED examination.

The waiver may only be used after other sources of financial aid that are dedicated solely to tuition and fees are exhausted.

Any award under this section is in addition to the number of fee waivers permitted in sections five and six [§§ 18B-10-5 and 18B-10-6] of this article for undergraduate, graduate and professional schools.

No student who is enrolled in an institution of higher education as of the effective date of this section is eligible for a waiver award under the provisions of this section.

The governing boards may establish any limitations on the provisions of this section as they consider proper. (2000, c. 113.)

Editor's notes. — Concerning the reference above to "the effective date of this section", Acts 2000, c. 113, provided that the act take effect March 11, 2000.

Effective dates. — Acts 2000, c. 113, provided that the act take effect March 11, 2000.

§ 18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

(a) In addition to all other fees imposed by the governing boards, there is hereby imposed and the governing boards are hereby directed to provide for the collection of an additional registration fee from all students enrolled in any state institution of higher education under its jurisdiction in the amounts hereinafter provided.

(1) For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The governing boards have authority to increase such additional registration fee at institutions of higher education under its jurisdiction for students who are nonresidents of this state.

(2) For all part-time students and for all summer school students, the governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

(b) The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and may not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

(c) There is created in the state treasury a special capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds of the additional registration fees collected from students at all state institutions of higher education pursuant to this section to be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such registration fees were pledged prior to the enactment of this section.

(d) The governing boards may make expenditures from any of the special capital improvements funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following projects:

(1) The acquisition of land or any rights or interest therein;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for any such buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital education facilities.

(e) The governing boards, in their discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or the commission, upon request of institutions or governing boards, singly or jointly, may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: Provided, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the commission or governing boards to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as was agreed upon by the governing board or boards and the commission and presented to the governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

(f) Such revenue bonds may be authorized and issued from time to time by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

(g) The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as determined by the governing board receiving the proceeds and the commission. Such revenue bonds shall be signed by the governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chancellor of the

commission or the chair of the appropriate governing boards. Such revenue bonds shall be sold in such manner as the commission or governing board determines is for the best interests of the state.

(h) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of such revenue bonds.

(i) After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education may not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued. Such revenue bonds shall be and constitute negotiable instruments under the uniform commercial code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds may not be deemed to be obligations or debts of the state, and the credit or taxing power of the state may not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(j) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. It is the intent of the Legislature to authorize over a five-year period beginning on the seventeenth day of June, two thousand, additional sources of revenue and funds to effect such funding for capital improvement.

(k) Funding of system-wide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any bonds issued pursuant to this code shall remain the responsibility of that institution.

(*l*) Any revenue bonds proposed to be issued under this section or article twelve-b [§§ 18-12B-1 et seq.], chapter eighteen of this code must be first approved by the commission.

(m) Revenue bonds issued pursuant to article twelve-b [§§ 18-12B-1 et seq.], chapter eighteen of this code may be issued by the commission or governing boards, either singly or jointly.

(n) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b [§§ 18-12B-1 et seq.], chapter eighteen prior to the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission shall have the authority to transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section, or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner. (1989, c. 64; 2000, c. 100; 2001, c. 110.)

Effect of amendment of 2000. — Acts 2000, c. 100, effective June 17, 2000, substituted "commission" for "governing board" and "governing boards" throughout the section; substituted "may not be" for "shall not be" in the third paragraph in (a); in the first paragraph in (b), deleted "jointly" following "expended" and inserted "or the succeeding governing boards"; deleted the second paragraph in (b), which read, "At such time as the commingling of such registration fees shall no longer be required, all proceeds shall be paid into the appropriate special capital improvements fund for each governing board for the benefit of any and all state institutions of higher education under the jurisdiction of that governing board"; in the fourth paragraph in (c), substituted "such terms of prior redemption" for "such terms or prior redemption" in the first sentence and twice substituted "chancellor" for "president" in the second sentence; substituted "may not be" for "shall not be" once in the sixth paragraph in (c) and twice in the seventh paragraph in (c); added the eighth and ninth paragraphs in (c); and made other, minor changes.

Effect of amendment of 2001. — Acts 2001, c. 110, effective July 1, 2001, designated the second and third paragraphs of former (a) as subdivisions (a)(1) and (a)(2); in (a), (a)(1) and (a)(2), substituted "governing boards" for "commission" (twice in (a)); designated the fourth paragraph of former (a) as present (b), former (b) as present (c), and former (c) and its undesignated paragraphs as present (d) through (k); in present (c), inserted "for each state institution of higher education and the commission" and "and governing boards" following "by the commission"; in (d), substituted "governing boards" for "commission" and redesignated clauses (1) through (5) as subdivisions (d)(1) through (d)(5); in (e), substituted "The governing boards, in their" for "The commission, in its" and inserted "the commission, upon request of institutions or governing boards, singly or jointly" in the first sentence, and inserted "or governing boards" preceding "to meet the cost" and "the governing board or boards and" following "agreed upon by" in the proviso; in (f), inserted "or governing boards"; in (g), inserted "governing board receiving the proceeds and the" in the first sentence, inserted "or the chair of the governing boards" and "or the chair of the appropriate governing boards" in the second sentence, and inserted "or governing board" in the last sentence; in (h), inserted "or governing boards" three times following "by the commission"; in (j), inserted "or governing boards" following "by the commission" in the first sentence and substituted "beginning on the seventeenth day of June, two thousand" for "from the effective date of this section"; added (*l*), (m), and (n); and made other, minor changes.

Editor's notes. — Concerning the references in (n) to "the effective date of this section," Acts 2001, c. 110, which amended this section and added this language, provided that the act take effect July 1, 2001.

§ 18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal agency or from any foundation, corporation, or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state educational institution administering such program shall have the authority

to excuse all students enrolled in such program from the payment of tuition, registration and other enrollment fees. (1989, c. 64.)

§ 18B-10-10. Disposition and use of student union fees; issuance of revenue bonds.

Whenever the term "student union building" is used in this section, the same shall mean a student union building or a combination student union building and dining hall building; and wherever the term "building fund" is used in this section the same shall mean the respective special student union building funds created as provided in section one [§ 18B-10-1] of this article for each state educational institution which has imposed student union fees pursuant to section one of this article, to be expended by the appropriate governing board for the benefit of the state institutions of higher education under its jurisdiction.

Each governing board may make expenditures from such building funds at the various state institutions of higher education under its jurisdiction to finance in whole or in part together with any federal, state or other grants or contributions, any one or more of the following purposes:

(1) The construction and acquisition of new student union buildings;

(2) The acquisition, renovation and improvement of existing buildings to be used as student union buildings;

(3) The construction of additions, extensions and improvements to existing student union buildings;

(4) The acquisition of furnishings and equipment for any existing student union buildings or student union buildings to be constructed or acquired, or the construction of any roads, utilities or other properties, real or personal, or for any other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such student union buildings; and

(5) The payment of the cost of operation and maintenance of such student union buildings, subject however to any covenants or agreements made with the holders of revenue bonds heretofore and hereafter issued pursuant to this section or pursuant to section one of this article.

Each governing board, at its discretion, may use the moneys in such building funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such building funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such building funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis, or for the payment of the cost of operation and maintenance, or any part thereof, of such student union buildings, under such terms and conditions as shall be provided in the proceedings which authorized the issuance of such revenue bonds.

Such revenue bonds may be authorized and issued from time to time by a governing board to finance in whole or in part the projects at any state

institution of higher education under its jurisdiction provided for in this section in an aggregate principal amount not exceeding the amount which the board shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such building funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board, and such revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates, not exceeding twelve per centum per annum; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as the board shall determine. Such revenue bonds shall be signed by the governor and by the president of the governing board, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of the governing board. Such revenue bonds shall be sold in such manner as the governing board may determine to be for the best interests of the state.

The governing board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such building funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds issued by the governing board for the same educational institution under the provisions of this section; as to the maintenance or revision of the amounts of such student union fees, and the terms and conditions, if any, under which any of such student union fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the governing board in the best interests of the state and to enhance the marketability of such revenue bonds.

Any revenues or income derived from the operation of such student union buildings may, in the discretion of the governing board, be used to pay the cost of the operation and maintenance of such student union buildings, or for the debt service on any bonds issued pursuant to this section or pursuant to any other law.

After the issuance of any of such revenue bonds, the student union fees at the state institution of higher education for which such revenue bonds were issued shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of the state and shall, together with the interest

thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the student union fees pledged therefor as provided in this section.

The provisions of this section shall constitute an additional, alternative and complete authority for the exercise of the powers and the issuance of the bonds provided for in this section, but shall not prevent the governing boards from exercising similar or related powers or issuing bonds therefor under any other law or laws, but the governing board, in exercising the powers and issuing the bonds provided for in this section, shall only be required to comply with the provisions of this section and shall not be required to comply with or be subject to the provisions of any other law or laws. (1989, c. 64.)

Cross references. — Negotiable Instruments, §§ 46-3-101 et seq.

§ 18B-10-11. Fees and money derived from athletic contest.

The directors of athletics at state institutions of higher education may fix and charge admission fees to athletic contests at state institutions of higher education and may enter into contracts and spend and receive money under such contracts for the student athletic teams of state institutions of higher education to contest with other athletic teams inside or outside the state. All money received from such fees and contracts shall be deposited into the athletic accounts of the state institutions of higher education.

All money derived from such fees and under such contracts shall be used to defray the cost of maintaining the athletic department and athletic program of such institutions. The operation of training camps and training tables and providing room accommodations for participants in the athletic program of such institutions shall be recognized and considered as a proper part of such maintenance, but the specific mention of training camps and training tables and providing room accommodations shall not be construed or understood to limit in any way the general power and authority otherwise granted and conferred by this section: Provided, That (1) one percent of the total gross receipts deposited into the athletic accounts and (2) not less than twenty-five percent of the net receipts from televised athletic events, bowl games and post-season tournaments deposited into the athletic accounts shall be transferred into a separate and distinct special revenue account for each individual state institution of higher education, which special revenue account shall be designated "athletic facilities construction, repair or replacement reserve account," in the state treasury. Such revenues shall be used only for construction, repair or replacement of athletic facilities at the same individual state institution of higher education to which such special revenue account is credited. Notwithstanding any other provision in this section to the contrary, in the year in which they are received, no more than twenty-five percent of the

net receipts from televised athletic events, bowl games and post-season tournaments deposited into athletic accounts may be transferred into other accounts of the same state institution of higher education having such receipts for the support of academic programs to meet an occasional rather than recurrent need or expense, and in accord with legislative rules promulgated by the appropriate governing board in accordance with chapter twenty-nine-a of this code [§§ 29A-1-1 et seq.], notwithstanding any other provision of this code to the contrary. (1989, c. 64.)

§ 18B-10-12. Student activity fees.

The president or other administrative head of any state institution of higher education may authorize the collection of fees from students for the support of extracurricular activities of the students, and after authorizing the collection of such fees, the president or other administrative head shall file with the state auditor and state budget director a certified detailed statement of the fees authorized to be collected and the purpose for which they are to be spent. (1989, c. 64.)

§ 18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.

The appropriate governing board of each state institution of higher education shall fix the fees to be charged students and faculty members for rooms, board and meals at the dormitories, faculty homes, dining halls and cafeterias operated by such board at the institution. Such fees shall be commensurate with the complete cost of such services.

All fees collected for such services shall be used first to pay the operating and maintenance costs of the dormitories, faculty homes, dining halls and cafeterias and to meet interest, principal and sinking fund requirements due on any outstanding revenue bonds for which such receipts may have been pledged as security. Any such receipts not needed for these purposes may be expended by the appropriate governing board to defray the costs in whole or in part for the construction of any such facility. (1989, c. 64.)

§ 18B-10-14. Bookstores.

The appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. The bookstore shall be operated for the use of the institution itself, including each of its schools and departments, in making purchases of books, stationery and other school and office supplies generally carried in college stores, and for the benefit of students and faculty members in purchasing such products for their own use, but no sales shall be made to the general public. The prices to be charged the institution, the students and the faculty for such products shall be fixed by the governing board, shall not be less than the prices fixed by any fair trade agreements, and shall in all cases include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover

all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses, to the end that the prices charged shall be commensurate with the total cost to the state of operating the bookstore.

Each governing board shall also ensure that bookstores operated at institutions under its jurisdiction meet the additional objective of minimizing the costs to students of purchasing textbooks by adopting policies which may require the repurchase and resale of textbooks on an institutional or a statewide basis and provide for the use of certain basic textbooks for a reasonable number of years.

All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two [§ 12-2-2], article two, chapter twelve of this code. Each governing board shall, subject to the approval of the governor, fix, and from time to time, change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store. From any balance in the Marshall university bookstore fund not needed for operation and maintenance and replenishing the stock of goods, the governing board of that institution shall have authority to expend a sum not to exceed two hundred thousand dollars for the construction of quarters to house the bookstore in the university center at Marshall university. Until such quarters for housing the bookstore are completed, the governing board of Marshall university and the governor shall take this authorization into account in fixing the amount of the revolving fund for the Marshall university bookstore. (1989, c. 64; 1993, c. 47.)

§ 18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

The appropriate governing board of each state institution of higher education shall have authority to provide special services and special programs at such institutions and may fix and collect special fees or charges therefor. Such special services and special programs may include any one or more of the following:

(1) The conduct of music camps and band, orchestra, or voice clinics for secondary school students or other youth groups, summer tutoring programs for primary and secondary school students, speech therapy clinics and services, educational and psychological testing programs, student guidance programs, and statistical studies and calculations by an electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff, and visitors.

(3) Rental of musical recordings, educational films, slides, and other audio-visual aids.

(4) Microfilming or other mechanical reproduction of records and noncopyrighted library reference materials.

(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses, and any other special program or special service customarily provided by institutions of higher education.

(6) Motor pools, consisting of motor vehicles for the use of their employees when carrying on the business and affairs of the institutions.

All fees or charges collected for any such special services or programs shall be paid into a special fund and shall be expended solely for the maintenance, operation and support of such services and programs.

Whenever any such special service is provided by one school, division or department of a state institution of higher education for the benefit of any other school, division or department in the same institution, the cost shall be paid by the school, division or department requesting the service and shall be deposited and expended as provided above. Whenever a motor pool is provided by the governing board of a state institution of higher education, such board may charge any school, college, department or division of such institution for which a vehicle is used a reasonable amount for such use, which amount shall be paid by such school, college, department or division and shall be deposited and expended as above provided. (1989, c. 64.)

§ 18B-10-16. Disposition of funds in state treasury.

Except as may be provided for in any bond resolution in effect, funds in the state treasury heretofore collected from any of the sources defined in the foregoing sections shall remain in the state treasury for use by the institution where collected. Any interest revenue generated by a special student fee account shall only be expended at or for the institution where such fee was collected. (1989, c. 64.)

ARTICLE 11.

MISCELLANEOUS INSTITUTES AND CENTERS.

Sec.

18B-11-1. Center for regional progress created; director powers; mission and purpose.
18B-11-2. Institute for public affairs; creation and purposes.
18B-11-3. Institute for international trade development; creation and purpose.
18B-11-4. Depositories for assistive devices and services.
18B-11-5. Institute for instructional technology.
18B-11-6. National institute for teaching excellence established.

§ 18B-11-1. Center for regional progress created; director powers; mission and purpose.

(a) There is hereby created an economic development entity known as the "center for regional progress" at Marshall University. The center shall be under the control and supervision of a director, which position is to be filled by an individual qualified by experience and education. The director shall be appointed by the president of Marshall University. The director may employ such

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VOLUME 7A

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2004 SUPPLEMENT

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ARTICLE 10.

FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

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§ 18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among the tuition and fees any one or more of the following as defined in section one-b [§ 18B-10-1b] of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing system-wide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from such accounts, an institution may expend funds from each such special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and

extracurricular activities. Additionally, tuition and fees may be used to finance a student's attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

(d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.

(e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code, subject to the prior approval of the legislative oversight commission on education accountability.

(f) The schedule of all tuition and fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the legislative auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged full-time students, as defined in section one-b [§ 18B-10-1b] of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(h) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student's finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code, defining conditions under which an institution may offer

tuition and fee deferred pa
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tuition and fee deferred payment plans through the institution or through third parties.

(5) An institution may charge interest or fees for any deferred or installment payment plans.

(i) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(j) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rule proposed by the commission and council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(*l*) Tuition and fee increases of the governing boards are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code.

(1) A governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board. A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three quarters percent. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board. The commission or council, as appropriate, shall examine individually each request from a governing board for an increase. Any proposed increase requires the approval of the commission or council, as appropriate.

In determining whether to approve or disapprove the governing board's request, the commission or council shall determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution has met the following conditions:

(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a [§§ 18B-1A-1 et seq.] of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one [§§ 18B-1-1 et seq.] and one-a [§§ 18B-1A-1 et seq.] of this chapter;

(D) Is implementing the efficiency measures required by section nine [§ 18B-5-9], article five of this chapter;

(E) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(F) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(G) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(2) This section does not require equal increases among institutions or require any level of increase at an institution.

(3) The commission and council shall report to the legislative oversight commission on education accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (1) of this subsection.

(4) For fiscal year two institution under the jurisc fees for undergraduate resi than the amount authoriz this section.

(m) The amount of fees this act under the provisi resource fee, a faculty im professions fee and a stu tuition or fees classificatio (1989, c. 64; 1993, c. 47; 19 1st Ex. Sess., c. 13.)

Code of State Rules Refer sessment, payment and refu 128 CSR 22, effective May 5, 1

Effect of amendment of 2003, c. 96, effective March 8, "Provided," "Provided, That" a however" throughout the section; "Provided, however, That, effecti of July, two thousand one" prec and fees"; added subdivision d (d); in the introductory langua tuted "Pursuant to the provision of this article, the fees" for "ar "following purposes" to the end; from the end of (d)(1); in (f)(3) commenced on or after the first one thousand nine hundred nir lowing "work stoppage"; rewrc

18B-10-1b. Special

In addition to the othe has the authority to impo fee under the following c

(a) The fee shall be us provisions of 20 U. S. C. Amendment of 1972;

(b) The fee is exempt article for three years fr

(c) The fee may not be participation in its athl

(d) The fee may not enrolled in an administra c. 92.)

Effective dates. — Acts 2 vided that the act take effect

Editor's notes. — Concerni

(4) For fiscal year two thousand five only, a governing board of any institution under the jurisdiction of the commission may increase tuition and fees for undergraduate resident students by one and one-half percent greater than the amount authorized by the commission pursuant to the provisions of this section.

(m) The amount of fees assessed immediately prior to the effective date of this act under the provisions of this article relating to a higher education resource fee, a faculty improvement fee, a medical education fee, a health professions fee and a student activities fee are included in the appropriate tuition or fees classifications established under subsection (a) of this section. (1989, c. 64; 1993, c. 47; 1995, c. 99; 2000, c. 100; 2001, c. 110; 2003, c. 96; 2004, 1st Ex. Sess., c. 13.)

Code of State Rules References. — Assessment, payment and refund of fees, 128 CSR 22, effective May 5, 1994.

Effect of amendment of 2003. — Acts 2003, c. 96, effective March 8, 2003, deleted "Provided," "Provided, That" and "Provided, however" throughout the section; in (b), deleted "Provided, however, That, effective the first day of July, two thousand one" preceding "Tuition and fees"; added subdivision designations in (d); in the introductory language of (d), substituted "Pursuant to the provisions of section ten of this article, the fees" for "and" and added "following purposes" to the end; deleted "or for" from the end of (d)(1); in (f)(3), deleted "that commenced on or after the first day of January, one thousand nine hundred ninety-three" following "work stoppage"; rewrote (g); in (h), substituted "other fees provided in this section" for "fees mentioned in the preceding subsections"; deleted former (i) and (j), pertaining to tuition and fees rates, and redesignated the remaining subsections accordingly; rewrote present (i); in present (j), substituted "A penalty may not" for "No penalty shall" and "nonresidents and such" for "out-of-state residents and such"; added (k)(1) through (4); and made minor stylistic changes.

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the section.

Editor's notes. — Concerning the reference in (m) to "the effective date of this act," Acts 2004, 1st Ex. Sess., c. 13, which amended this section and added the language, became effective March 21, 2004.

18B-10-1b. Special equity fee; purpose; exemptions.

In addition to the other fees provided in this article, each governing board has the authority to impose, collect and expend the proceeds of a special equity fee under the following conditions:

(a) The fee shall be used solely for the purpose of complying with the athletic provisions of 20 U. S. C. 1681, et seq., known as Title IX of the Education Amendment of 1972;

(b) The fee is exempt from limitations on fee increases set forth in this article for three years from the effective date of this section;

(c) The fee may not be used by an institution to advance its classification of participation in its athletics governing body; and

(d) The fee may not be imposed upon part-time students or students enrolled in an administratively linked community and technical college. (2004, c. 92.)

Effective dates. — Acts 2004, c. 92, provided that the act take effect March 13, 2004.

Editor's notes. — Concerning the reference to "the effective date of this section," Acts 2004, c. 92, which enacted this section and provided the language became effective March 13, 2004.

Acts 2004, 1st Ex. Sess., c. 13, enacted a section numbered 18B-10-1b; it was subsequently renumbered 18B-10-1c.

§ 18B-10-1c. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) "Auxiliary capital fees" means charges levied on students to support debt service, capital projects and campus maintenance and renewal for the auxiliary facilities of the institutions;

(b) "Auxiliary fees" means charges levied on all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominately to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers;

(c) "Full-time graduate student" means a graduate student who is enrolled for nine or more credit hours in a regular term;

(d) "Full-time undergraduate student" means an undergraduate student who is enrolled for twelve or more credit hours in a regular term;

(e) "Required educational and general capital fees" means:

(1) Charges levied on all students to support debt service of systemwide bond issues; and

(2) Charges levied on all students to support debt service, capital projects and campus maintenance and renewal for an institution's educational and general educational facilities; and

(f) "Tuition and required educational and general fees" means:

(1) Charges levied on all students of that class or category to support educational and general program services; and

(2) Optional charges levied for education and general services collected only from students using the service or from students for whom the services are made available. Educational and general expenditures are categorized as instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises, hospitals or independent operations. (2004, 1st Ex. Sess., c. 13.)

Editor's notes. — This section was originally enacted as 18B-10-1b; because a section with that number already existed, it was subsequently renumbered as 18B-10-1c.

Effective dates. — Acts 2004, 1st Ex. Sess., c. 13, provided that the act take effect March 21, 2004.

§ 18B-10-2. Higher education resource assessment.

(a) Pursuant to the authority granted by section four [§ 18B-1B-4], article one-b of this chapter, and section six [§ 18B-2B-6], article two-b of this chapter, the commission and council jointly shall establish a higher education resource assessment per student for each state institution of higher education under their respective jurisdictions. Community and technical colleges shall transfer

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(1989, c. 64; 2000, c. 100;

Effect of amendments of 2004, c. 92, effective March 13, "and council jointly" in the first the second paragraph, inserted tions under the jurisdiction of th inserted a third sentence, which percent of the fee collections fr under the jurisdiction of the deposited in a special fund an allocated by the council to mee

§ 18B-10-3.

Repealed by Acts 2004,

Editor's notes. — Former § acted 1989, c. 64), concerning f

§ 18B-10-4. Medica

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all funds collected pursuant to this section to the council. All other institutions shall transfer all funds collected pursuant to this section to the commission. Any reference in this code to higher education resource fee means this higher education resource assessment.

(b) The commission and council jointly shall fix the assessment for the various institutions and classes of students and may periodically change these assessments. The amount of the assessment for each institution shall be prorated for part-time students.

(c) Each institution shall maintain a level of support for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services comparable to that level supported by the higher education resource fee previously authorized by this section.

(d) The assessment shall be expended or allocated by the commission or council to meet its general operating expenses or to fund statewide programs. To the maximum extent practicable, the commission and council shall offset the impact, if any, on financially needy students of any potential assessment increase under this section by allocating an appropriate amount of the revenue to the state scholarship program to be expended in accordance with the provisions of article five [§§ 18C-5-1 et seq.], chapter eighteen-c of this code. (1989, c. 64; 2000, c. 100; 2004, c. 92; 2004, 1st Ex. Sess., c. 13.)

Effect of amendments of 2004. — Acts 2004, c. 92, effective March 13, 2004, inserted "and council jointly" in the first paragraph; in the second paragraph, inserted "from institutions under the jurisdiction of the commission," inserted a third sentence, which read "Up to ten percent of the fee collections from institutions under the jurisdiction of the council shall be deposited in a special fund and expended or allocated by the council to meet general operating expenses of the council or to fund statewide programs," substituted "council" for "commission" in the third sentence, and substituted "The boards shall" for "Provided, That the board shall"; and in the third paragraph, inserted "and council each" and substituted "annually" for "each year."

Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, substituted "assessment" for "fee" in the section heading; and rewrote the section.

§ 18B-10-3.

Repealed by Acts 2004, 1st Ex. Sess., c. 13.

Editor's notes. — Former § 18B-10-3 (enacted 1989, c. 64), concerning faculty improvement fees, was repealed by Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004.

§ 18B-10-4. Medical education.

The commission shall determine an appropriate portion of all tuition and fees paid by medical students enrolled for credit at the West Virginia university school of medicine, Marshall university school of medicine and the West Virginia school of osteopathic medicine to be used to support the health education student loan fund. The portion determined by the commission for this purpose shall be deposited into the health education student loan fund account in accordance with the provisions of article three [§§ 18C-3-1 et seq.], chapter eighteen-c of this code. (1989, c. 64; 1991, 2nd Ex. Sess., c. 20; 2004, 1st Ex. Sess., c. 13.)

(e) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board. (1989, c. 64; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the section.

§ 18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.

(a) Each governing board shall promulgate a rule establishing a reduced tuition and fee program for senior citizens. The rule shall include at least the following:

(1) One option for individuals who attend undergraduate and graduate courses without receiving credit and one option for those who attend undergraduate and graduate courses for credit;

(2) A requirement that the following conditions be met under either option of the program:

(A) The participant is a resident of West Virginia;

(B) The participant is sixty-five years of age or older; and

(C) Classroom space is available;

(3) A method of establishing priority for allowing a participant to attend a class or course;

(4) A determination of whether to require participants to pay special fees, including laboratory fees, if the fees are required of all other students;

(5) A determination of whether to require participants to pay for parking;

(6) Requirements for participants in the program under the no credit option:

(A) A grade or credit may not be given; and

(B) The total tuition and fees charged for each course or class, excluding laboratory and parking fees, may not exceed fifty dollars. After the first day of July, two thousand four, the governing boards may change the maximum fee; and

(7) A requirement for participants in the program under the for credit option that tuition and fee rates may not exceed fifty percent of the normal rates charged to state residents by the institution.

(b) The provisions of this section apply to both classroom- based courses, electronic and internet-based courses, and all other distance education delivery. (1999, c. 114; 2004, 1st Ex. Sess., c. 13.)

Code of State Rules References. — Reduced tuition and fee program for state residents who are at least sixty-five years of age, 131 CSR 67, effective July 1, 2001.

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the section.

§ 18B-10-8. Collect auxilia tal and revenu

(a) Effective the first rules adopted by the co section and article three- code, govern the collecti capital fees authorized first day of July, two collection and disposition section remain in effect.

(b) *Fees for full-time* auxiliary capital fees for education per semester. board may fix such fees this state.

(c) *Fees for part-time* summer school students fees in proportion to, bu Refunds of such fees m collected at state institu

(d) There is created i fund and special auxiliar of higher education and respectively, of:

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(2) The fees collecte [§ 18B-10-1] of this artic

The fees shall be expe payment of the principa board of regents or the pledged prior to the ena

(e) The governing boa capital improvements fi established in this secti federal, state or other following projects:

(1) The acquisition of

(2) The construction

(3) The renovation or

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(5) The construction capital education facili

§ 18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) Effective the first day of July, two thousand four, this section, and any rules adopted by the commission, council, or both, in accordance with this section and article three-a [§§ 29A-3A-1 et seq.], chapter twenty-nine-a of this code, govern the collection, disposition and use of the capital and auxiliary capital fees authorized by section one [§ 18B-10-1] of this article. Prior to the first day of July, two thousand four, the statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) *Fees for full-time students.* — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix such fees at higher rates for students who are not residents of this state.

(c) *Fees for part-time students.* — For all part-time students and for all summer school students, the governing boards shall impose and collect such fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of such fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is created in the state treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from such students pursuant to section one [§ 18B-10-1] of this article.

The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest therein;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for any such buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at such state institutions of higher education,

including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

(f) The governing boards, in their discretion, may use the moneys in such special capital improvements funds and special auxiliary improvement funds to finance the costs of the above purposes on a cash basis. The commission, when singly or jointly requested by the governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis. Any expenditures from such special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as was agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure.

(g) Such revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

(h) The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission and such revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as determined by the governing board receiving the proceeds and the commission. Such revenue bonds shall be signed by the governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. Such revenue bonds shall be sold in such manner as the commission or governing board determines is for the best interests of the state.

(i) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under the provisions of this section; as to the maintenance or revision of the amounts of such fees; as to the extent to which swap agreements, as defined in section two-h [§ 13-2G-2h], article two-g, chapter thirteen of this code shall be used in connection with such revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the commission shall consider necessary or desirable, if any, under which such fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of such revenue bonds.

(j) After the issuance of any of such revenue bonds, the fees at the state institutions of higher education pledged to the payment thereof may not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued. Such revenue bonds shall be and constitute negotiable instruments under the uniform commercial code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(k) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. It is the intent of the Legislature to authorize over a five-year period beginning on the first day of July, two thousand four, additional sources of revenue and funds to effect such funding for capital improvement.

(*l*) Funding of systemwide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(m) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the commission.

(n) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(o) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b [§§ 18-12B-1 et seq.], chapter eighteen prior to the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission shall have the authority to transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(p) Effective the first day of July, two thousand four, the capital and auxiliary capital fees authorized by this section and section one [§ 18B-10-1] of this article are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section, such fees shall remain in effect in amounts not less than the amounts in effect as of that date, until such time as the revenue bonds payable from any of such fees have been paid or the pledge of such fees is otherwise legally discharged. (1989, c. 64; 2000, c. 100; 2001, c. 110; 2004, 1st Ex. Sess., c. 13.)

Code of State Rules References. — Assessment, payment and refund of fees, 128 CSR 22, effective May 5, 1994.

Capital project management, 128 CSR 54, effective February 11, 2000.

Capital project management, 131 CSR 54, effective February 16, 1998.

Capital project management, 133 CSR 12, effective December 25, 2001.

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the section.

Editor's notes. — Concerning the references to "the effective date of this section," Acts 2004, 1st Ex. Sess., c. 13, which amended this section, took effect March 21, 2004.

§ 18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal, state or local agency or from any foundation, corporation or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state institution of higher education administering the program has the authority to excuse all students enrolled in such program from the payment of tuition and other fees. (1989, c. 64; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, inserted "state or local," substituted "state institution of higher education administering the program has" for "state educational institution administering such program shall have," "and other fees" for "registration and other enrollment fees"; and made a minor stylistic change.

§ 18B-10-10.

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§ 18B-10-11. F
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§ 18B-10-10.

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Editor's notes. — Former § 18B-10-10 (enacted 1989, c. 64), concerning disposition and use of student union fees and issuance of revenue bonds, was repealed by Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004.

§ 18B-10-11. Fees and money derived from athletic contests.

The governing board of a state institution of higher education may fix and charge admission fees to athletic contests at institutions under its jurisdiction. The governing board may enter into contracts and spend and receive money under such contracts for the student athletic teams of the institutions to contest with other athletic teams inside or outside the state. All money received from such fees and contracts shall be deposited in the auxiliary operating account of the institution and expended for any purpose considered necessary and proper by the governing board. (1989, c. 64; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the section.

§ 18B-10-12. Student activities.

(a) The governing board of a state institution of higher education may make funds available from tuition and fees to support extracurricular activities of the students as considered necessary.

(b) Each institution shall maintain a level of support for extracurricular activities of the students comparable to that level supported by student activities fees previously authorized by this section. (1989, c. 64; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote (a); and added (b).

§ 18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.

The appropriate governing board of each state institution of higher education shall fix the fees to be charged students and faculty members for rooms, board and meals at the dormitories, faculty homes, dining halls and cafeterias operated by such board at the institution. Such fees shall be commensurate with the complete cost of such services.

All fees collected for such services shall be used first to meet interest, principal and sinking fund requirements due on any outstanding revenue bonds for which the receipts may have been pledged as security and to pay the operating and maintenance costs of the dormitories, faculty homes, dining

halls and cafeterias. Any such receipts not needed for these purposes may be expended by the appropriate governing board for any other auxiliary enterprise or educational and general instructional costs. (1989, c. 64; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the second paragraph.

§ 18B-10-14. Bookstores.

(a) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell books, stationery and other school and office supplies generally carried in college bookstores.

(b) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage and other operating expenses.

(c) Each governing board also shall ensure that bookstores operated at institutions under its jurisdiction meet the additional objective of minimizing the costs to students of purchasing textbooks by adopting policies which may require the repurchase and resale of textbooks on an institutional or a statewide basis and provide for the use of certain basic textbooks for a reasonable number of years.

(d) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in section two [§ 12-2-2], article two, chapter twelve of this code. Subject to the approval of the governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

(e) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships. (1989, c. 64; 1993, c. 47; 2003, c. 96; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2003. — Acts 2003, c. 96, effective March 8, 2003, added the last two sentences to the end of the final paragraph.

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, rewrote the section.

§ 18B-10-15. Author vide spe and disp

(a) The governing board provide special services an and collect special fees or programs include, but are

(1) The conduct of mus secondary school students for primary and secondar vices; educational and psy grams; and statistical stu service.

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(b) All fees or charges c shall cover the total cost o Sess., c. 13.)

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RESEARCH AND I STATE INSTITU

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§ 18B-12-2. Legislat

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§ 18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

(a) The governing board of each state institution of higher education may provide special services and special programs at such institutions and may fix and collect special fees or charges therefor. Such special services and special programs include, but are not limited to, any of the following:

(1) The conduct of music camps and band, orchestra or voice clinics for secondary school students or other youth groups; summer tutoring programs for primary and secondary school students; speech therapy clinics and services; educational and psychological testing programs; student guidance programs; and statistical studies and calculations by an electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff and visitors.

(3) Rental of musical recordings, educational films, slides and other audio-visual aids.

(4) Microfilming or other mechanical reproduction of records and noncopyrighted library reference materials.

(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses and any other special program or special service customarily provided by institutions of higher education.

(6) Motor pools consisting of motor vehicles for the use of their employees when carrying on the business and affairs of the institutions.

(b) All fees or charges collected for any such special services or programs shall cover the total cost of the service or program. (1989, c. 64; 2004, 1st Ex. Sess., c. 13.)

Effect of amendment of 2004. — Acts 2004, 1st Ex. Sess., c. 13, effective March 21, 2004, redesignated the former undesignated first paragraph as (a); in (a), deleted "appropriate" preceding "governing board," substituted "may provide" for "shall have authority to provide" and "include, but are not limited to, any" for "may include any one or more"; redesignated the former second paragraph as (b); rewrote (b); and deleted the former third paragraph, pertaining to cost spreading for services provided by one unit to other units.

ARTICLE 12.

RESEARCH AND DEVELOPMENT AGREEMENTS FOR STATE INSTITUTIONS OF HIGHER EDUCATION.

Sec.
18B-12-2. Legislative findings and purpose.
18B-12-4. Agreement; required provisions.
18B-12-10. Assignment or transfer of property to certain corporations.

§ 18B-12-2. Legislative findings and purpose.

(a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions of higher education, and enhanced research opportunities for state

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 18, ARTICLE 12B, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

§ 18-12A-6. Credit of State not pledged.

No provisions of this article shall be construed to authorize the board at any time or in any manner to pledge the credit or taxing power of the State, nor shall any of the obligations or debts created by the board under the authority herein granted be deemed to be obligations of the State. (1956, c. 8.)

§ 18-12A-7. Bonds exempt from taxation.

All bonds issued by the board under the provisions of this article shall be exempt from taxation by the State of West Virginia, or by any county, school district or municipality thereof. (1956, c. 8.)

§ 18-12A-8. Supplemental powers conferred; conflicting laws superseded.

The powers conferred by this article shall be in addition and supplemental to the existing powers of the board of education. The provisions of any other law or laws conflicting with the provisions of this article shall be and the same are hereby superseded to the extent of any such conflict. (1956, c. 8.)

ARTICLE 12B.

REVENUE BONDS FOR STATE INSTITUTIONS OF HIGHER EDUCATION — CAPITAL IMPROVEMENTS ON SYSTEM BASIS.

Sec.
18-12B-1. Board of regents [abolished] authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.
18-12B-2. State system tuition fee special capital improvements fund in state treasury; collections to be paid into special fund; authority of board of regents [abolished] to pledge such collections as security for revenue bonds; authority of board to finance projects on a cash basis.
18-12B-3. Board of regents [abolished] to fix and collect fees.
18-12B-4. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.
18-12B-5. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.
18-12B-6. Bonds may be issued for combined purposes.
18-12B-7. Bonds shall be negotiable instruments.
18-12B-8. Trust agreements for holders of bonds.
18-12B-9. Sinking fund for payment of bonds.
18-12B-10. Credit of State not pledged.
18-12B-11. Attorney general or his duly appointed legal representative to serve as bond counsel.
18-12B-12. Powers of board are supplemental; conflicting laws superseded.

§ 18-12B-1. Board of regents [abolished] authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.

The West Virginia board of regents [abolished] shall have authority, as provided in this article, to issue revenue bonds of the state from time to time,

either to finance the cost of major renovations, repairs and safety upgrading and providing new capital improvements consisting of facilities, buildings and structures, for those state institutions of higher education as determined by resolution of the board of regents, including any college, university or community college under its supervision, management and control, or to refund, at the discretion of the board of regents, bonds issued and outstanding under and pursuant to the provisions of this article or article eleven-b [§§ 18-11B-1 et seq.] of this chapter, or both. Such major renovations, repairs and safety upgrading and capital improvements may, in each case, include land for current or future use in connection therewith and equipment and machinery and other similar items essential or convenient in connection with the foregoing but shall not include such items as books, fuel, supplies or other items which are customarily deemed to result in a current operating charge. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment. The costs of any such major renovations, repairs and safety upgrading and capital improvements shall include the cost of acquisition of land, the construction and acquisition of any such major renovations, repairs and safety upgrading and capital improvements and equipment and machinery therefor, and the provision of roads, utilities, and other services necessary, appurtenant or incidental to the foregoing; and shall also include all other charges or expenses necessary, appurtenant or incidental to the construction, acquisition, and financing including, but not limited to, debt service reserve requirements and capitalized interest, and placing in operation of any such major renovations, repairs and safety upgrading and capital improvements: Provided, That from time to time but not later than the first day of March, one thousand nine hundred seventy-eight, the board shall issue and sell bonds pursuant to this article in an amount which, when combined with cash available under the provisions of section two [§ 18-12B-2] of this article, will be sufficient to finance the costs of the following purposes and projects:

(1) Refunding of all bonds issued and outstanding under and pursuant to the provisions of article eleven-b [§§ 18-11B-1 et seq.] of this chapter;

(2) A building to house the music, arts and theatre programs at Shepherd College, at a cost not to exceed two million five hundred thousand dollars;

(3) A field house at West Liberty State College at a cost not to exceed two million seven hundred thousand dollars;

(4) A shop and laboratory building at West Virginia State College at a cost not to exceed two million six hundred thousand dollars;

(5) A multipurpose physical education facility at Marshall University, at a cost not to exceed eighteen million dollars;

(6) A new football stadium at West Virginia University (at a different location than the existing stadium) at a cost not to exceed twenty million dollars; and

(7) An all-purpose shell building for sports and physical education at West Virginia University, at a cost not to exceed four million five hundred thousand dollars.

In the event that private real property is acquired in connection with the above enumerated projects or any board projects initiated on or after the first

day of July, one thousand nine hundred eighty-eight, the board shall reimburse individuals, families and business concerns for relocation costs incurred as a consequence of being displaced by such acquisition. With respect to payment of such relocation costs, the board shall follow the same procedure and be subject to the same limitations as required for the commissioner of highways under section twenty [§ 17-2A-20], article two-a, chapter seventeen of this code and regulations promulgated pursuant thereto. (1977, c. 90; 1988, c. 49.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

W. Va. Law Review. — Van Tol, "Crisis in Higher Education Governance: One State's Struggle for Excellence," 91 W. Va. L. Rev. 1 (1989).

Cited in UMW v. Parsons, 172 W. Va. 386, 305 S.E.2d 343 (1983).

§ 18-12B-2. State system tuition fee special capital improvements fund in state treasury; collections to be paid into special fund; authority of board of regents [abolished] to pledge such collections as security for revenue bonds; authority of board to finance projects on a cash basis.

There is created in the state treasury a state system tuition fee special capital improvements fund to be expended by the board of regents for the benefit of the state institutions of higher education, which shall include any college, university or community college under its supervision, management and control.

On and after the first day of July, one thousand nine hundred seventy-seven, the board of regents [abolished] may periodically transfer from the special nonrevolving West Virginia University capital improvements fund created in the state treasury pursuant to the provisions of article eleven-b [§§ 18-11B-1 et seq.] of this chapter and from the special nonrevolving Marshall University capital improvements fund created in the state treasury pursuant to the provisions of article twelve-a [§§ 18-12A-1 et seq.] of this chapter, into the state system tuition fee special capital improvements fund moneys in excess of the amount pledged for the payment of the principal of, interest and redemption premium, if any, on any revenue bonds or revenue refunding bonds issued pursuant to such article eleven-b or twelve-a prior to the first day of July, one thousand nine hundred seventy-seven. Said Marshall University capital improvements fund is hereby continued notwithstanding the retirement of outstanding bonds issued pursuant to such article twelve-a, but on and after the first day of July, one thousand nine hundred seventy-seven, no bonds shall be issued pursuant to article twelve-a, nor shall any moneys be expended (unless the board of regents shall by board action have made a commitment with respect thereto) pursuant to such article twelve-a. On and after the first day of July, one thousand nine hundred seventy-seven there shall be paid directly into such state system tuition fee special capital improvements fund subject to the prior lien and pledge, if any, of outstanding bonds issued pursuant to the provisions of articles eleven-b and twelve-a of this chapter all tuition fees collected under the provisions of section one [§ 18-24-1, repealed],

article twenty-four, chapter eighteen of this Code, from students at West Virginia and Marshall universities; and on and after the first day of July, one thousand nine hundred seventy-eight, in addition to said fees from students at West Virginia University and Marshall University (and subject to said prior lien and pledge, if any) there shall be paid directly into such state system tuition fee special capital improvements fund all tuition fees collected under the provisions of section one, article twenty-four, chapter eighteen of this Code, from students at all other state institutions of higher education which are under the supervision, management and control of the board of regents: Provided, That tuition fees from students at community colleges shall not be paid into the state system tuition fee special capital improvements fund unless the board shall otherwise determine by resolution.

The board of regents [abolished] shall have authority to pledge all or such part of the revenues and tuition fees paid into the state system tuition fee special capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds, the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor and including such additional protective pledge of revenues and fees as the board of regents in its discretion may provide by resolution authorizing the issue of such bonds and in any trust agreement made in connection therewith, and the board of regents may further provide in such resolution and in such trust agreement, for such priorities on the revenues and fees paid into such state system tuition fee special capital improvements fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

Any balance remaining in the state system tuition fee special capital improvements fund after the board of regents [abolished] has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued pursuant to this article have been satisfied, may be used (i) for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of such bonds at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued or (ii) for any lawful purpose for which the board of regents may expend funds.

The board of regents [abolished], in its discretion, may use the moneys in such state system tuition fee special capital improvements fund to finance the cost of projects and purposes on a cash basis. Any pledge of moneys in such fund for revenue bonds shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project or purpose on a cash basis: Provided, That except for the projects and purposes expressly enumerated in section one [§ 18-12B-1] of this article, any expendi-

tures from such fund, other than for the retirement of revenue bonds, may only be made by the board to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order or priority as shall have been agreed upon by the board of regents and presented to the governor for inclusion in the annual budget bill, and only with the approval of the legislature as indicated by direct appropriation for the purpose. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-3. Board of regents [abolished] to fix and collect fees.

The board of regents [abolished] shall fix, establish, maintain and collect the tuition fees provided for in section one [§ 18-24-1, repealed], article twenty-four, chapter eighteen of this Code, from students at all state institutions of higher education other than (unless the board of regents shall otherwise determine by resolution) tuition fees from students attending community colleges, in amounts at least sufficient, at all times, after depositing (subject to, or until termination of, the lien and pledge referred to in section two [§ 18-12B-2] of this article) in the special nonrevolving Marshall University capital improvements fund, and the special nonrevolving West Virginia University capital improvements fund referred to in section two of this article such tuition fees as are now required to be deposited therein pursuant to section one, article twenty-four, chapter eighteen of this Code, to provide revenues for deposit in the state system tuition fee special capital improvements fund which are adequate to pay the principal of, interest and redemption premium, if any, on the bonds authorized to be issued pursuant to this article as the same mature and become due and to make all reserve and other payments to be required by the proceedings which authorize such bonds, and to provide any additional protective pledge of revenues and fees and reserve or other payments as the board of regents may in its discretion require by the resolution authorizing any issue of bonds pursuant to this article and any trust agreement made in connection therewith, and to make all other payments required by this article or any such proceedings, resolutions or trust agreements. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-4. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the board of regents [abolished], which shall set forth the proposed major renovations, repairs and safety upgrading and capital improvements authorized by section

one [§ 18-12B-1] of this article; and shall provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys deemed by the board of regents sufficient to pay such costs, less the amounts of any other funds available for said costs from any other moneys of the board of regents available therefor or from any appropriation, grant or gift therefor. Such resolution shall prescribe the rights and duties of the bondholders and the board of regents, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds may be issued from time to time, in such amounts, shall be of such series, bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges be payable in such medium of payment and at such place or places within or without the State; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof; and be entitled to such priorities on the revenues and fees paid into the state system tuition fee special capital improvements fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith. The bonds shall be signed by the governor, and by the president or vice president of the board of regents, under the great seal of the State, attested by the secretary of State, and the coupons attached thereto shall bear the facsimile signature of the president or vice president of the board of regents. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery. Such revenue bonds shall be sold in such manner as the board of regents may determine to be for the best interests of the State.

Any pledge of funds and fees for such revenue bonds made by the board of regents shall be valid and binding between the parties from the time the pledge is made; and the funds so pledged shall immediately be subject to the lien of such pledge without any further physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge, and such pledge shall be a prior and superior charge over any other use of such funds so pledged.

The proceeds of such bonds shall be used solely for the payment of the cost of those major renovations, repairs and safety upgrading and capital improvements as generally and specifically set forth in section one of this article, and shall be deposited in the state treasury in a special fund to be disbursed as provided by law for the disbursement of any other state funds. If the proceeds of such bonds, by error in calculations or otherwise, shall be less than the cost of such major renovations, repairs and safety upgrading and capital improvements, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, such additional bonds shall be deemed to be of the same issue, and shall be entitled to payment from the same fund,

without preference or priority, as the bonds before issued for major renovations, repairs and safety upgrading and capital improvements. If the proceeds of bonds issued for such major renovations, repairs and safety upgrading and capital improvements shall exceed the cost thereof, the surplus may be used for such other capital improvements as the board of regents may determine or in such other manner as the resolution authorizing such bonds may provide. Prior to the preparation of definitive bonds, the board may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of such definitive bonds. The term "cost," as used in this section, shall be deemed to include all of the items contemplated by the use of that term in section one of this article.

After the issuance of any of such revenue bonds, the tuition fees at the state institutions of higher education pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds and the revenue refunding bonds, and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-5. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

The issuance of revenue refunding bonds under the provisions of this article shall be authorized by resolution of the board of regents [abolished] and shall otherwise be subject to the limitations, conditions and provisions of section four [§ 18-12B-4] of this article. Such revenue refunding bonds may be issued in an amount at the option of the board of regents sufficient to pay either in full or together with interest earned on the investment of the proceeds thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are payable or callable for optional redemption, (1) the principal of any outstanding bonds heretofore issued pursuant to the provisions of article eleven-b [§§ 18-11B-1 et seq.] of this chapter or this article (hereinafter referred to as the "outstanding bonds"); (2) the redemption premium, if any, on such outstanding bonds or the prior redemption thereof; (3) the interest due and payable on such outstanding bonds to and including the first date upon which said outstanding bonds are callable prior to maturity, not exceeding, however, ten years from the date of issuance of such revenue refunding bonds, or the dates upon which the principal of said outstanding bonds mature before such first date on which the same are callable prior to maturity, including any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said revenue refunding bonds, including all necessary financial and legal expenses, and also including the creation of

initial debt service reserve funds. Any moneys in funds pledged with respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal of, interest and redemption premium, if any, on such outstanding bonds which will not be immediately due and payable shall be deposited in trust, for the sole purpose of making such payments, with the treasurer of the State of West Virginia or the state sinking fund commission. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on such outstanding bonds, be invested and reinvested as determined by the board of regents, in whole or in part: (a) in direct obligations issued by the United States of America or one of its agencies or in direct obligations of the State of West Virginia, (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest, or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America, or direct obligations of the State of West Virginia, having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money, will be sufficient to pay when due or called for redemption the bonds refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and held in trust for the payment and redemption of the bonds refunded: Provided, That if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed in such manner as the board of regents shall by resolution determine, subject to the provisions of section two [§ 18-12B-2] of this article. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

The authority to issue revenue refunding bonds shall be in addition to any other authority to refund bonds conferred by law.

The board of regents [abolished] shall have power to enter into such escrow agreements and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the

provisions of this article and to insure the prompt payment of principal of and interest and redemption premiums on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the board of regents [abolished] shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state sinking fund commission or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-6. Bonds may be issued for combined purposes.

The board of regents [abolished] may authorize by one or more resolutions a single issue of bonds for the combined purposes of refunding the outstanding bonds as herein authorized and financing one or more of the major renovations, repairs and safety upgrading and capital improvements herein authorized. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-7. Bonds shall be negotiable instruments.

The revenue bonds, revenue refunding bonds and bonds issued for combined purposes under the provisions of this article shall, independently of the requirements of any other provision of law and solely by virtue of the provisions of this section, be and have all the qualities and incidents of negotiable instruments. (1977, c. 90.)

§ 18-12B-8. Trust agreements for holders of bonds.

The board of regents [abolished] may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the State, to act as trustee for the holders of bonds issued hereunder, setting forth therein such duties and containing such legally binding covenants of the board of regents with the holders of the bonds in respect to the payment of the bonds, the fixing, establishing and collecting

of the fees hereinbefore referred to; the acquisition, construction, improvement, maintenance, operation, repair and insurance of authorized major renovations, repairs and safety upgrading and capital improvements; the custody, safeguarding and disposition of the proceeds of the bonds, and the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds, notwithstanding provisions of this article to the contrary; the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the purchasers of such bonds; provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of municipal corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders; and provisions as to any other matters which are deemed necessary and advisable by the board of regents in the best interests of the State and to enhance the marketability of the bonds. Any such agreement entered into by the board of regents shall be binding in all respects on such board and its successors from time to time in accordance with the terms thereof; and all the provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or otherwise. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-9. Sinking fund for payment of bonds.

From the state system tuition fee special capital improvements fund the board of regents [abolished] shall make periodic payments to the state sinking fund commission in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as may be specified in the resolution of the board authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed by the commission in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the board of regents, authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but at not exceeding the price if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-10. Credit of State not pledged.

No provisions of this article shall be construed to authorize the board of regents [abolished] at any time or in any manner to pledge the credit or taxing power of the State, nor shall any of the obligations or debts created by the board under the authority herein granted be deemed to be obligations of the State. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

§ 18-12B-11. Attorney general or his duly appointed legal representative to serve as bond counsel.

The attorney general, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of bonds under this article. (1977, c. 90.)

§ 18-12B-12. Powers of board are supplemental; conflicting laws superseded.

The powers conferred by this article shall be in addition and supplemental to the existing powers of the board of regents [abolished]. The provisions of any other law or laws conflicting with the provisions of this article shall be and the same are hereby superseded to the extent of any such conflict. (1977, c. 90.)

Editor's notes. — For provisions abolishing the board of regents, see §§ 18B-1-1 et seq.

ARTICLE 13.

WEST VIRGINIA STATE COLLEGE.

Sec.
18-13-1. Continuation and management; courses and degrees; rules and regulations.
18-13-2. [Repealed.]

§ 18-13-1. Continuation and management; courses and degrees; rules and regulations.

The institution for the instruction of students heretofore established and located at Institute, in Kanawha County, shall be continued and shall be known as the "West Virginia State College." The business and educational affairs of said college shall be under the control, supervision and management of the state board of education, as provided in section thirteen [§ 18-2-13, see editor's notes], article two of this chapter.

The state board of education shall establish and maintain in the West Virginia State College, in addition to the courses of study leading to a bachelor

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 29, ARTICLE 22, SECTION 18a OF THE WEST VIRGINIA CODE, AND CHAPTER 29, ARTICLE 22, SECTION 18a OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state. (1985, c. 115; 1989, c. 117; 1990, c. 125; 1994, 1st Ex. Sess., c. 25; 1996, c. 78; 1998, c. 125; 2001, 1st Ex. Sess., c. 6.)

Effect of amendment of 2001. — Acts 2001, 1st Ex. Sess., c. 6, effective April 21, 2001, in (a), substituted "consists" for "shall consist"; in (d), inserted "may be allocated... each lottery"; in (f), substituted "No additional transfer may be made" for "No additional transfer shall be made"; in (g), substituted "may not be treated" for "shall not be treated"; in the second sentence of (h), substituted "nor may the total allocation" for "nor shall the total allocation"; in the second paragraph of (h), substituted "profits... be placed" for "lottery director shall allocate monthly, from the net profits of the lottery for the preceding month, an amount equal to one million five hundred thousand dollars"; in (i), added "Beginning", substituted "July... thereafter" for "each month", substituted "may the monthly amount allocated" for "shall the monthly amount allocated", substituted "nor may the total allocation paid" for "nor shall the total allocation paid"; in (j), inserted "amounts" preceding "shall be deposited", and inserted "be distributed in the manner provided below and may".

Calculation of the statutory allocation. — "Gross sales," as contained in § 29-22-10(a)(11), refers to the full face value of lottery tickets sold, and the gross amount received from each lottery, as contained in subsections (c), (d) and (e), of this section refers to gross sales less the statutory five percent commission. Therefore, calculations of the statutory allocations under this section should be based upon the amount actually received after the appropriate deduction for commissions. Op. Att'y Gen., Apr. 13, 1990, No. 28.

Applied in State ex rel. Marockie v. Wagoner, 191 W. Va. 458, 446 S.E.2d 680 (1994).

Stated in State ex rel. Lawrence v. Polan, 192 W. Va. 629, 453 S.E.2d 612 (1994).

Cited in United States v. ReBrook, 837 F. Supp. 162 (S.D. W. Va. 1993), aff'd, 516 U.S. 970, 116 S. Ct. 431, 133 L. Ed. 2d 346 (1995); State ex rel. Marockie v. Wagoner, 190 W. Va. 467, 438 S.E.2d 810 (1993).

§ 29-22-18a. State excess lottery revenue fund.

(a) There is hereby created a special revenue fund within the state lottery fund in the state treasury which shall be designated and known as the "state excess lottery revenue fund". The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c [§§ 29-22A-10b and 29-22A-10c], article twenty-two-a of this chapter and under article twenty-two-b [§§ 29-22B-101 et seq.] of this chapter, except the amounts due the commission under section 29-22B-1408(a) (1) of this chapter, shall be deposited in the state treasury and placed into the "state excess lottery revenue fund". The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand one, the moneys of the fund established in this section shall be used for the purpose of subsidizing salary increases and associated employee benefits paid from the state general revenue fund as determined by the secretary of administration effective the first day of July, two thousand one or thereafter, including, but not limited, to the salary increase for teachers provided in section two [§ 18A-4-2],

article four, chapter eighteen-a of this code, by enactment of the Legislature in two thousand one; the salary increase for members of the state police provided in section five [§ 15-2-5], article two, chapter fifteen of this code by enactment of the Legislature in two thousand one; and general salary increases for state employees: Provided, That effective the first day of October, two thousand one, the full year salary increases for state employees other than correctional officers and members of the state police equal seven hundred fifty-six dollars for each full-time employee: Provided, however, That effective the first day of July, two thousand one, the full year salary increases for uniformed correctional officers equal two thousand dollars for each full-time employee; and that the full year salary increases for non-uniformed correctional staff, whose core duties include contact with inmates or juvenile detainees on a regular and frequent basis, equal one thousand two hundred fifty dollars for each full-time employee; but that for all other division of correction and division of juvenile services employees, the full year salary increase equals seven hundred fifty-six dollars for each full-time employee. Until the thirtieth day of June, two thousand two, the lottery commission shall, upon direction from the governor, transfer the moneys of the account to the state general revenue fund in the amounts specified in the governor's official revenue estimates to subsidize the funding of the salary increases described in this subsection. Beginning the first day of July, two thousand two, and thereafter, the transfer authority granted by this subsection is terminated. After first satisfying the funding requirements directed by this subsection, the moneys remaining in the fund shall be disbursed in the manner provided by subsection (c) of this section.

(c) For the fiscal year beginning the first day of July, two thousand one, the commission shall deposit: (1) Five million five hundred thousand dollars into the account hereby created in the state treasury to be known as the "education improvement fund" for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (2) twenty-five million dollars to the school building debt service fund created in section six [§ 18-9D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (3) twenty-five million dollars in the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (4) ten million dollars into a separate account within the state lottery fund to be known as the higher education improvement fund for higher education; and (5) nine million dollars into a separate account within the state lottery fund to be known as the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the "general purpose account" to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (3) twenty-five million dollars to the school building debt service fund created in section six

[§ 18-9D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (4) fifty million dollars in the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (5) ten million dollars into the higher education improvement fund for higher education; and (6) nine million dollars into the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) seventeen million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (3) twenty-five million dollars to the school building debt service fund created in section six [§ 18-9D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (4) fifty million dollars in the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (5) ten million dollars into the higher education improvement fund for higher education; and (6) nine million dollars into the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand four, and subsequent fiscal years, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (3) twenty-five million dollars to the school building debt service fund created in section six [§ 18-9-D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (4) fifty million dollars in the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (5) ten million dollars into the higher education improvement fund for higher education; and (6) nine million dollars into the state park improvement fund for park improvements.

(d) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsection (c) of this section, the commission shall, after providing for the distribution to the education improvement fund for appropriation by the Legislature to the promise scholarship fund, distribute the revenue on a pro rata basis.

(e) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (c) and (h) of this section, deposit fifty percent of the amount by which annual gross revenue deposited in the state excess lottery revenue fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the state lottery fund to be available for appropriation by the Legislature.

(f) When bonds are issued for the infrastructure, higher education or park improvement purposes described in this section that are secured by profits

from lotteries deposited in the state excess lottery revenue fund, the lottery director shall allocate to the debt service fund created for that purpose, as a third priority from the net profits of the lottery under this section and section eighteen [§ 29-22-18] of this article for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the lottery director in accordance with legislation authorizing issuance of the bonds. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A third-in-priority lien on the proceeds of the state lottery fund and the state excess lottery revenue fund up to a maximum amount equal to the projected annual principle, interest and coverage ratio requirements, not to exceed an annual amount specified in legislation authorizing issuance of the bonds, may be granted by the state in favor of the bonds it issues which are secured by net lottery profits and state excess lottery revenue.

(g) No portion of the distributions made as provided in subsection (c) of this section may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the passage of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under subsection (c) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(h) In fiscal year two thousand four, and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one [§ 11-21-21], article twenty-one, chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the public employees insurance agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matters areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a

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recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state. (1985, c. 115; 1989, c. 117; 1990, c. 125; 1994, 1st Ex. Sess., c. 25; 1996, c. 78; 1998, c. 125; 2001, 1st Ex. Sess., c. 6; 2002, c. 104.)

Effect of amendment of 2002. — Acts 2002, c. 104, effective March 9, 2002, in (f), deleted "ten-year" preceding "bonds authorized" and added "any and all . . . time to time" at the end in the first sentence, inserted "the economic development project fund . . . of this article" in the third sentence, and substituted "school building authority . . . lottery proceeds" for "school building authority and the state building commission, which are secured by lottery proceeds"; in the first paragraph of (h), substituted "as long as revenue bonds or refunding bonds are outstanding" for "through the twentieth day of June, two thousand five" in the first sentence; in the second paragraph of (h), inserted "as a first priority from the net profits of the lottery"; in the first paragraph of (i), substituted "as long as revenue bonds or refunding bonds are outstanding" for "through the twenty-eighth day of June, two thousand twenty-one" in the first sentence; added the second paragraph of (i); and made minor stylistic changes.

Cited in State ex rel. W. Va. Citizens Action Group v. W. Va. Econ. Dev. Grant Comm., 213 W. Va. 255, 580 S.E.2d 869, 2003 W. Va. LEXIS 52 (2003).

§ 29-22-18a. State excess lottery revenue fund.

(a) There is continued a special revenue fund within the state lottery fund in the state treasury which is designated and known as the "state excess lottery revenue fund". The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b [§ 29-22A-10b] and ten-c [§ 29-22A-10c], article twenty-two-a of this chapter and under article twenty-two-b [§§ 29-22B-1 et seq.] of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, shall be deposited in the state treasury and placed into the "state excess lottery revenue fund". The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the "general purpose account" to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school building debt service fund created in section six [§ 18-9D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the high tion; and (7) five million doll improvements. For the fiscal three, the commission shal general purpose account to Legislature; (2) seventeen m for appropriation by the Leg in section seven [§ 18C-7-7] nineteen million dollars into subsection (d) of this section in accordance with the provi into the school building deb article nine-d, chapter eight (5) forty million dollars into section nine [§ 31-15A-9], a spent in accordance with th into the higher education in million dollars into the stat

(c) For the fiscal year beg subsequent fiscal years, th dollars into the general pu priation of the Legislature; improvement fund for ap scholarship fund" created i eighteen-c of this code; (3) ment project fund created revenue bonds and to be subsection; (4) nineteen m fund created in section six code for the issuance of re Virginia infrastructure fu fifteen-a, chapter thirty-on provisions of said article; improvement fund for hig state park improvement distributions made as pro section, except distributio subsection (d) of this sec indebtedness until after t bonds and payment of deb or the adoption of a concu Until subsequent legisla expressly authorizes issua bonds with funds distribu section, except distributi subsection (d) of this secti improvements that are no tion of the Legislature.

million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) seventeen million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school building debt service fund created in section six [§ 18-9D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements.

(c) For the fiscal year beginning the first day of July, two thousand four, and subsequent fiscal years, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven [§ 18C-7-7], article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) nineteen million dollars into the school building debt service fund created in section six [§ 18-9D-6], article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine [§ 31-15A-9], article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia economic development authority created and provided for in article fifteen [§§ 31-15-1 et seq.], chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the governor, issue revenue bonds of the economic development authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on, the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is continued in the state treasury a special revenue fund named the "economic development project fund" into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. The economic development project fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia economic development authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the economic development project fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.

(3) After the West Virginia economic development authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the economic development project fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the
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(4) Bonds issued under
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(6) For the purpose of
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(8) When determinin
shall take into consider

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(C) The ability of the
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outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the state of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the state of West Virginia; and that the bondholders' remedies are limited in all respects to the "special revenue fund" established in this subsection for the liquidation of the bonds.

(5) The West Virginia economic development authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for such projects as may be certified under the provision of this subsection: Provided, That the bond proceeds shall be expended in accordance with the requirements and provisions of article five-a [§§ 21-5A-1 et seq.], chapter twenty-one of this code and either article twenty-two [§§ 5-22-1 et seq.] or twenty-two-a [§§ 5-22A-1 et seq.], chapter five of this code, as the case may be: Provided, however, That if such bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code and if the design-build board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding such contract, such determination shall be conclusive for all purposes and shall be deemed to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the governor, or his or her designee, the secretary of the department of tax and revenue, the executive director of the West Virginia development office and six persons appointed by the governor: Provided, That at least one citizen member must be from each of the state's three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the first day of July, two thousand two, shall be considered refiled with the committee. Within ten days from the effective date of this section as amended in the year two thousand three, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits

involved and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) No grant may be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the economic development authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the national register of historic places;

(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

(L) Other facilities that pro
tional opportunities or touris
welfare of this state and its r

(12) Prior to the issuance
shall certify to the economic
projects that will receive fund
the list may not thereafter b
enactment.

(13) If any proceeds from
making grants and loans as
deposited in an account cre
"economic development proje
council for community and
[§ 5B-2-2], article two, chapt
are not authorized from collec
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article three [§§ 12-3-1 et
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(e) If the commission recei
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be distributed on a pro rata

(f) For the fiscal year begi
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this article an amount equal
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deposit fifty percent of the ar
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dollars in a fiscal year in a
available for appropriation

(g) When bonds are issue
for the school building aut
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director shall allocate firs
amount equal to one tenth

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the economic development authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account created in the state treasury to be known as the "economic development project bridge loan fund" to be administered by the council for community and economic development created in section two [§ 5B-2-2], article two, chapter five-b of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three [§§ 12-3-1 et seq.], chapter twelve of this code and upon fulfillment of the provisions of article two [§§ 5A-2-1 et seq.], chapter five-a of this code. Loan repayment amounts, including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) of this section, the commission shall first make the distribution to the economic development project fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the education improvement fund for appropriation by the Legislature to the promise scholarship fund; and fourth, make the distribution to the general purpose account: Provided, That, subject to the provisions of this subsection, to the extent such revenues are not pledged in support of revenue bonds which are or may be issued from time to time under this section, the revenues shall be distributed on a pro rata basis.

(f) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (b), (c) and (h) of this section and after transferring to the state lottery fund created under section eighteen [§ 29-22-18] of this article an amount equal to any transfer from the state lottery fund to the excess lottery fund pursuant to subsection (f), section eighteen of this article, deposit fifty percent of the amount by which annual gross revenue deposited in the state excess lottery revenue fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the state lottery fund to be available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d) of this section or for the school building authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the state excess lottery revenue fund, the lottery director shall allocate first to the economic development project fund an amount equal to one tenth of the projected annual principal, interest and

coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of July, two thousand two, as certified to the lottery director; and second, to the fund or funds from which debt service is paid on bonds issued under this section for the school building authority, infrastructure, higher education and park improvements an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the lottery director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(h) In fiscal year two thousand four and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one [§ 11-21-21], article twenty-one, chapter eleven of this code.

(i)(1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the public employees insurance agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost effective program possible for the senior citizens of this state; and by working closely with the state's congressional delegation to ensure that a national program is implemented. The Legislature further directs that the governor report his progress back to the joint committee on government and finance on an annual basis beginning in November of the year two thousand one until a comprehensive program has been fully implemented. (2001, 1st Ex. Sess., c. 6; 2002, c. 104; 2003, 2nd Ex. Sess., c. 22.)

Effect of amendment of 2002 2002, c. 104, effective March 9, 2002, through (g).

Effect of amendment of 200 2003, 2nd Ex. Sess., c. 22, effective Ju substituted "continued" for "hereb near the beginning of (a) and (d)(2); and (c); redesignated the subdivisi inserting (d)(4), (d)(7) through (d)(11), and adding (d)(13); rewro (d)(6); inserted "certified" in prese updated internal references and m stylistic changes.

Editor's notes. — Concerning th in (d)(7) to "the effective date of this amended in the year two thousand t 2003, 2nd Ex. Sess., c. 22, which an section and added the language, be tive July 1, 2003.

Constitutionality. — Appointm nism for the West Virginia Econom ment Grant Committee contained Code § 29-22-18a(d)(3) violates the of powers provision of the State found in W. Va. Const. art. V, § appointments provision found in W art. VII, § 8; further, based upon sufficient standards provided for th tee's use in evaluating the subm projects pursuant to the provision Code § 29-22-18a(d)(3), the West V islature has wrongfully delegated it

§ 29-22-22.

Repealed by Acts 2004, 5

Editor's notes. — Former § 2 acted by Acts 1985, c. 115), concer tion of lottery prizes from state an

RACETI

Sec.

29-22A-6. Video lottery termir and software r hardware specifi ware requireme domness testing quirements for payout; softwa ments for con video lottery ga function; softw ments for play records.

29-22A-10. Accounting and re mission to prov cations protocol

Effect of amendment of 2002. — Acts 2002, c. 104, effective March 9, 2002, rewrote (c) through (g).

Effect of amendment of 2003. — Acts 2003, 2nd Ex. Sess., c. 22, effective July 1, 2003, substituted "continued" for "hereby created" near the beginning of (a) and (d)(2); rewrote (b) and (c); redesignated the subdivisions of (d), inserting (d)(4), (d)(7) through (d)(9) and (d)(11), and adding (d)(13); rewrote present (d)(6); inserted "certified" in present (d)(12); updated internal references and made minor stylistic changes.

Editor's notes. — Concerning the reference in (d)(7) to "the effective date of this section as amended in the year two thousand three," Acts 2003, 2nd Ex. Sess., c. 22, which amended this section and added the language, became effective July 1, 2003.

Constitutionality. — Appointment mechanism for the West Virginia Economic Development Grant Committee contained in W. Va. Code § 29-22-18a(d)(3) violates the separation of powers provision of the State constitution found in W. Va. Const. art. V, § 1 and the appointments provision found in W. Va. Const. art. VII, § 8; further, based upon the lack of sufficient standards provided for the Committee's use in evaluating the submitted grant projects pursuant to the provisions of W. Va. Code § 29-22-18a(d)(3), the West Virginia Legislature has wrongfully delegated its powers in violation of W. Va. Const. art. 6, § 1; however, the statutory provisions of W. Va. Code § 29-22-18a(d)(3) which govern the issuance of bonds and the repayment mechanisms are constitutional. Due to these constitutional infirmities, the actions previously taken by the Committee with regard to approving various grant applications are of no force and effect, *decided prior to the amendment of this section by Acts 2003, 2nd Ex. Sess., c. 22, effective July 1, 2003.* State ex rel. W. Va. Citizens Action Group v. W. Va. Econ. Dev. Grant Comm., 213 W. Va. 255, 580 S.E.2d 869, 2003 W. Va. LEXIS 52 (2003).

When a citizens' group was partially successful in a mandamus proceeding challenging the constitutionality of W. Va. Code § 29-22-18a(d)(3), it was entitled to an award of attorney's fees, after applying the factors of: (1) the relative clarity by which the legal duty the group sought to enforce was established; (2) whether the ruling obtained promoted the general public interest or protected a private interest; and (3) whether the group had adequate financial resources to protect its interests. State ex rel. W. Va. Citizens Action Group v. W. Va. Econ. Dev. Grant Comm., — W. Va. —, — S.E.2d —, 2003 W. Va. LEXIS 145 (Dec. 4, 2003).

Quoted in Club Ass'n of W. Va., Inc. v. Wise, 156 F. Supp. 2d 599, 2001 U.S. Dist. LEXIS 13580 (S.D.W. Va. 2001), aff'd, 293 F.3d 723 (4th Cir. 2002).

§ 29-22-22.

Repealed by Acts 2004, 59.

Editor's notes. — Former § 29-22-22 (enacted by Acts 1985, c. 115), concerning exemption of lottery prizes from state and local taxation, was repealed by Acts 2004, c. 59, effective March 12, 2004.

ARTICLE 22A.

RACETRACK VIDEO LOTTERY.

Sec.

29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

29-22A-10b. Distribution of excess net terminal income.

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 13, ARTICLE 2G, OF THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

August 27, 2004

Secretary of State

owners of public obligations who request a change. The official registrar or his designee shall issue a confirmation of the transaction in the form of a written advice. The official registrar or his designee shall have such additional powers as are necessary to effectuate the purposes of this article. (1986, c. 118.)

§ 13-2F-6. Confidentiality.

Notwithstanding any other provision of this code to the contrary, the books of registry held by the official registrar or his designee shall be confidential, and the information contained therein shall not be available to the public. (1986, c. 118.)

§ 13-2F-7. Application to public obligations approved by voters.

The provisions of this article shall be effective with respect to public obligations which have prior to the first day of July, one thousand nine hundred eighty-six, been approved by the voters of the issuer of the public obligations at an election on the question of issuing public obligations in coupon and registered form, or in coupon form only, and the public obligations need not be resubmitted to the voters for the purpose of approving the issuance of the public obligations in registered form only. (1986, c. 118.)

ARTICLE 2G.

STATE REFUNDING BOND ACT.

Sec.		Sec.	
13-2G-1.	Short title.	13-2G-9.	Certain provisions of the code or act of Legislature to apply to refunding bonds.
13-2G-2.	Definitions.	13-2G-10.	Provision for payment of the bonds to be refunded.
13-2G-3.	Issuance of refunding bonds.	13-2G-11.	Bonds previously issued by the board of regents.
13-2G-4.	Security for refunding bonds.	13-2G-12.	Article sufficient authority for issuing refunding bonds.
13-2G-5.	Principal amount, use of sinking and reserve funds.	13-2G-13.	Issuance without election or creation of a new debt.
13-2G-6.	Terms of refunding bonds; time, place and amount of payments.	13-2G-14.	Bonds exempt from taxation.
13-2G-7.	Sale of refunding bonds at above or below par value.		
13-2G-8.	Swap agreements.		

§ 13-2G-1. Short title.

This article shall be known and may be cited as the "State Refunding Bond Act." (1992, c. 30.)

§ 13-2G-2. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Bonds" means general obligation bonds, review bonds, notes or other debt instruments issued by the state, a state agency or a state authority.

(b) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(c) "Legislature" means the Legislature of this state.

(d) "Refunding bonds" means bonds, notes or other debt instruments issued to refund all or any part of general obligation bonds, revenue bonds, notes or other debt instruments heretofore or hereafter issued or lawfully assumed by the state, a state agency or a state authority pursuant to the provisions of this code.

(e) "State" means the state of West Virginia, a state agency or a state authority.

(f) "State agency" means any office, department, cabinet, board, commission, entity, bureau, division, public corporation, agency, or instrumentality of the state authorized to issue bonds.

(g) "State authority" means any authority authorized to issue bonds, including, but without limitations, the university of West Virginia board of trustees and the board of directors of the state college system.

(h) "Swap agreement" means an agreement which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate opinion, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any similar agreement or any combination of the foregoing. (1992, c. 30.)

§ 13-2G-3. Issuance of refunding bonds.

The state may, in the manner and subject to the limitations and conditions contained in this article, issue its refunding bonds, at a public or private sale, for the purpose of refunding the bonds of the state then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. A determination by the state that any refunding is advantageous or necessary, or that any of the outstanding obligations should be called for redemption on the first or any subsequent available redemption date or permitted to remain outstanding until their respective dates of maturity, shall be conclusive: Provided, That a determination by the state to issue its refunding bonds as provided in this article is subject to the provisions of the debt management act set forth in article six-a [§§ 12-6A-1 et seq.], chapter twelve of this code. (1992, c. 30.)

§ 13-2G-4. Security for refunding bonds.

Refunding bonds may be secured by a pledge of: (a) The same source of security as the bonds to be refunded; or (b) such other security as the state may lawfully pledge, or both. (1992, c. 30.)

§ 13-2G-5. Principal amount, use of sinking and reserve funds.

(a) The total amount of refunding bonds to be issued under this chapter shall be an amount sufficient to effect the refunding and may include an amount sufficient to pay (1) the principal amount outstanding of the bonds to

be refunded, (2) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded (which need not necessarily be on the first available redemption date), (3) any redemption premiums to be paid thereon, (4) any reasonable expenses incurred in connection with such refunding and (5) any other reasonable costs deemed appropriate by the state, including without limitation, the expenses of preparing and delivering the refunding bonds, legal fees, financial advisor fees, consultant fees, and other expenses incurred in connection with the issuance, sale and delivery of the refunding bonds.

(b) Any money in a sinking fund or reserve fund or other fund for the bonds to be refunded may be used to pay the principal of, premium, if any, or interest on the outstanding bonds to be refunded or may be deposited in a sinking fund or reserve fund or other fund for the refunding bonds. (1992, c. 30.)

§ 13-2G-6. Terms of refunding bonds; time, place and amount of payments.

Upon determining the issue of such refunding bonds, the state shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount permitted by this article, fix the date thereof, the rate or rates of interest which such bonds shall bear, and when and where they are payable. (1992, c. 30.)

§ 13-2G-7. Sale of refunding bonds at above or below par value.

All refunding bonds issued by the state may be sold at a price equal to, above or below par value and accrued interest as the state may direct. Refunding bonds may also be sold at a zero (0) rate of interest or at an original issue discount. (1992, c. 30.)

§ 13-2G-8. Swap agreements.

The state may from time to time enter into one or more swap agreements that it determines to be necessary or desirable in connection with, or incidental to, or in lieu of the issuance of its refunding bonds. Swap agreements entered into by the state shall contain such provisions, including payment, term, security, default and remedy provisions, and shall be with such parties, as the state shall determine to be necessary or desirable after due consideration to the creditworthiness of such parties. (1992, c. 30.)

§ 13-2G-9. Certain provisions of the code or act of Legislature to apply to refunding bonds.

All the provisions of this code or any act of the Legislature, relating to bonds issued for original indebtedness and insofar as such provisions may be applicable, shall apply to the same extent and with equal force and effect to refunding bonds issued under the provisions of this article. (1992, c. 30.)

§ 13-2G-10. Provision for payment of the bonds to be refunded.

(a) It is the intention of this article to authorize the state to issue bonds for the purpose of refunding outstanding bonds without thereby contracting any additional indebtedness, and it shall be conditional upon the delivery of any refunding bonds that sufficient funds are held in trust to provide for the payment of the principal of, premium, if any, and interest on the bonds to be refunded. It is the further intention of this article that any amounts received by the issuance of any refunding bonds pursuant to this article be used solely for the purposes set forth in subsection (a), section five [§ 13-2G-5(a)] of this article and not be used for incurrence of additional debt.

(b) For all purposes of this section, bonds shall be considered to have been canceled and paid in advance of their due date or date of redemption if there shall have been deposited in trust for the benefit of holders of the bonds to be refunded:

(1) Moneys sufficient to pay when and as due all amounts of principal and interest payable on such bonds; or

(2) Direct obligations of the United States of America or the state, or obligations fully and irrevocably secured as to the payment of both principal and interest by such direct obligations the payment on which when due will provide moneys, sufficient to pay when and as due all amounts of principal and interest payable on such bonds.

(c) All such amounts shall be set aside and held in trust and irrevocably dedicated solely to the payment of such bonds, except that amounts in excess of the amounts required for the payment of the bonds so refunded may be applied to the payment of costs related to the issuance, carrying, insuring or servicing the refunding bonds, including costs of credit or market enhancement services, such as letters of credit, remarketing arrangements and similar services. Any amount deposited pursuant to this section may include amounts already held on deposit in trust for the payment of the bonds to be refunded. (1992, c. 30.)

§ 13-2G-11. Bonds previously issued by the board of regents.

In connection with or incident to the refunding of any bonds previously issued by the board of regents' pursuant to any prior enactment of chapter eighteen [§§ 18-1-1 et seq.] of the code, or the board of regents' predecessor in interest, the university of West Virginia board of trustees and the board of directors of the state college system, as the transferees of all powers, duties and authorities of the board of regents pursuant to chapter eighteen-b [§§ 18B-1-1 et seq.] of the code, are authorized to make one or more written agreements with regard to which entity is obligated to provide for the payment of such bonds previously issued by the board of regents and with regard to the allocation of revenues to be dedicated to the payment of refunding bonds. (1992, c. 30.)

§ 13-2G-12. Article sufficient authority for issuing refunding bonds.

This article shall, without reference to any other act of the Legislature, be full authority for the issuance, sale and exchange of bonds in this article authorized. No order, ordinance, resolution or proceeding in respect to the issuance of any bonds hereunder shall be necessary except such as are required by this article. No publication of any notice, order, ordinance or proceeding relating to the issuance of such bonds shall be necessary. (1992, c. 30.)

§ 13-2G-13. Issuance without election or creation of a new debt.

The issuance, sale or exchange of bonds authorized in this article may be had without an election and shall not be deemed to create a new debt as long as provision has been made to pay the principal of, premium, if any, and interest on the bonds to be refunded as provided in section seven [§ 13-2G-7] of this article. (1992, c. 30.)

§ 13-2G-14. Bonds exempt from taxation.

All bonds of the state, a state agency or state authority issued hereunder shall be exempt from all state, county, and municipal taxes, and the exemption includes income, inheritance and property taxes. (1992, c. 30; 2004, c. 46.)

Effect of amendment of 2004. — Acts 2004, c. 46, effective June 11, 2004, substituted "exemption includes" for "exception shall include."

ARTICLE 3.

MUNICIPAL BOND COMMISSION.

Sec.	
13-3-1.	Commission continued.
13-3-2.	Composition of commission; terms of appointment; vacancies; removal from office.
13-3-3.	Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.
13-3-4.	Executive committee; powers and duties.
13-3-5.	Officer and employee bonds.
13-3-5a.	Costs and expenses; fees for services.
13-3-6.	Powers and duties of commission.
13-3-7.	Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.
13-3-7a.	Escrowing bond issues.
13-3-8.	Notification by issuer of bond sale.
13-3-9.	Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.
13-3-10.	Accounts of bond issues; annual statements, canceled bonds and coupons.
13-3-11.	Statement by commission to political subdivision showing levy required; determination of levy.
13-3-12.	Destruction of canceled bonds and coupons.
13-3-13.	Substitute paying agents.
13-3-14.	Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.
13-3-15.	Reports of commission.

State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

Each of the following named persons were appointed by the Governor of the State of West Virginia as a member of the Higher Education Policy Commission and were qualified and acting as such member, on August 27, 2004 and that the dates of commencement and expiration of their respective terms of office are as follows:

Terry Sammons – July 8, 2002 to June 30, 2005
Elliot G. Hicks – July 31, 2002 to June 30, 2006
Richard K. Hall – September 19, 2002 to June 30, 2005
Mary Clare Eros – July 7, 2003 to June 30, 2007
Michael S. Garrison – November 25, 2003 to June 30, 2007
J. Thomas Jones – July 12, 2004 to June 30, 2008
Position not filled

Ex-Officio members:
Secretary of Education and the Arts
State Superintendent of Schools
Chair of the West Virginia Council for Community and Technical College Education

Given under my hand and the Great Seal of the State of West Virginia on
August 27, 2004

Secretary of State

RECYCLED PAPER
RECYCLABLE

$167,260,000
State of West Virginia
Higher Education Policy Commission
Revenue Bonds
(Higher Education Facilities)
2004 Series B

BOND PURCHASE AGREEMENT

August 18, 2004

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Suite 700
Charleston, West Virginia 25301

Ladies and Gentlemen:

Citigroup Global Markets Inc., acting on behalf of itself, Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriter"), hereby offers to enter into this Bond Purchase Agreement with the West Virginia Higher Education Policy Commission (the "Commission") for the sale by the Commission and the purchase by the Underwriter of the Bonds in the aggregate principal amount of $167,260,000 (the "Bonds") described herein and in the Official Statement (defined herein), which are being issued by the Commission. Upon your acceptance of this offer and your execution and delivery of this Bond Purchase Agreement (hereinafter referred to as the "Bond Purchase Agreement"), this Bond Purchase Agreement will be binding upon you and the Underwriter. This offer is made subject to your acceptance, evidenced by your execution and delivery of this Bond Purchase Agreement to the Underwriter, at or prior to 11:30 p.m., New York, New York time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree to in writing).

1. Definitions. The capitalized terms used in this Bond Purchase Agreement shall have the meanings assigned to them herein or, if not defined herein, shall have the meanings set forth in the Resolution as amended and the Certificate of Determinations (collectively, the "Commission Documents"). This Bond Purchase Agreement, the Official Statement, the Preliminary Official Statement, the Commission Documents, the Tax Agreement, the Escrow Agreement and the Construction Trustee, Registrar and Transfer Agent Agreement and the Continuing Disclosure Certificate are sometimes herein referred to as the "Bond Documents."

2. Closing. Delivery and acceptance of the Bonds and payment therefor (the "Closing") will take place in Charleston, West Virginia, at the offices of Spilman Thomas & Battle, Charleston, West Virginia, on August 31, 2004 (the "Closing Date") by 1:00 p.m. or at such other place or time as may be mutually agreed upon by you and the Underwriter. The Bonds will be available in definitive form at the offices of The Depository Trust Company (or the Registrar, if "DTC-Fast" delivery is used) not less than twenty-four hours prior to the Closing Date.

3. Purchase and Sale.

3.1 Subject to the terms and conditions set forth in this Bond Purchase Agreement, and upon the basis of the representations hereinafter set forth, the Underwriter hereby agrees to purchase from the Commission, and the Commission hereby agrees to sell to the Underwriter when, as and if issued, all (but not less than all) of the Bonds identified in Exhibit A attached hereto for a total purchase price equal to the Net Purchase Price set forth in Exhibit A, in immediately available funds.

3.2 The Bonds will (i) be issued pursuant to the Commission Documents and (ii) have the payment related terms (that is, dated dates, principal or issuance amounts, maturity dates, interest rates and yield to maturity) set forth in Exhibit A attached hereto, and will otherwise correspond to the description thereof contained in the Official Statement referred to in Section 3.3.

3.3 Within seven business days of its acceptance hereof, the Commission shall deliver to the Underwriter a reasonable number of copies of a final Official Statement of the Commission of even date herewith, executed by the Commission (the "Official Statement"). The Official Statement shall be in substantially the same form as that of the Preliminary Official Statement of the Commission dated August 12, 2004 (the "Preliminary Official Statement"), previously distributed with respect to the Bonds.

4. Concurrent Matters.

4.1 Your acceptance, execution and delivery of this Bond Purchase Agreement will constitute your acknowledgment that the Underwriter (a) proposes to make a public offering of the Bonds at the initial offering prices or yields set forth in the Official Statement (which such initial offering prices or yields may be changed by the Underwriter, in its sole discretion), (b) may effect transactions that stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market and may discontinue such stabilizing, if commenced, at any time and (c) may change the offering prices of the Bonds from time to time and may offer the Bonds to certain dealers and others at prices lower than the public offering prices shown on the front cover (or inside front cover) of the Official Statement.

4.2 Your acceptance, execution and delivery of this Bond Purchase Agreement will constitute (i) your consent and authorization to the use by the Underwriter, in connection with the public offering and sale of the Bonds, of copies of the Official Statement and the information, contained therein, and (ii) your ratification of the use by the Underwriter, in connection with such offering and sale, of the Preliminary Official Statement and the information contained therein.

5. Representations and Warranties.

5.1 The Commission hereby makes the following representations and warranties to the Underwriter:

(a) The Commission is a commission, created pursuant to Chapter 18B, Article 1B of the West Virginia Code of 1931, as amended, and authorized to issue the Bonds pursuant thereto and by Chapter 18, Article 12B and Chapter 13, Article 2G of the West Virginia Code of 1931, as amended (collectively, the "Act."), and further by Chapter 29, Article 22, Section 18a of the Code of West Virginia, as amended (the "Lottery Act").

(b) The predecessor to the Commission duly adopted the University System General Resolution, which has been amended and supplemented by the First through Seventh University Supplemental Resolutions (as defined in the Commission Documents) and the College System General Resolution, which has been amended and supplemented by the First through Third College Supplemental Resolutions (as defined in the Commission Documents). The Commission has adopted (i) the Eighth through Twelfth University Supplemental Resolutions and (ii) the Fourth through Sixth College Supplemental Resolutions and such Resolutions have not been rescinded, amended or modified. The Commission has further adopted the First and Second Consolidated Resolutions (as defined in the Commission Documents), and such Resolutions have not been rescinded, amended or modified. The Commission anticipates adopting a Third Consolidated Resolution (as defined in the Commission Documents) on August 20, 2004.

(c) When delivered to the Underwriter against payment therefor in accordance with the provisions of this Bond Purchase Agreement, the Bonds will have been duly authorized, executed, authenticated, issued and delivered.

(d) The execution and delivery by the Commission of the Bond Documents and the consummation by the Commission of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under the Act, or, to its knowledge, any applicable law, rule, regulation, judgment, decree, order or other requirement, or any material contract, indenture, agreement or commitment to which the Commission is a party or by which it is bound.

(e) The Commission is not in breach of or in default under any existing law, court or administrative regulation, judgment, decree, order, agreement, mortgage, lease, loan agreement or other instrument to which it is a party or by which it is bound. No event has occurred or is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under the Bond Documents or any other agreement or instrument to which the Commission is a party, or by which it may be bound or to which any of its property is or may be subject.

(f) The Commission has duly authorized all necessary action to be taken by it for (i) the issuance and sale of the Bonds by the Commission upon the terms and conditions set forth herein, in the Official Statement and in the Indenture and the approval of the Official Statement, the Indenture and the Bonds, and (ii) the execution, delivery and receipt of the Bond Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Commission in order to carry out, effectuate and consummate the transactions contemplated in the Bond Documents.

(g) The information contained in the Preliminary Official Statement and the Official Statement relating to the Commission and its properties, operations and financial and other affairs, including Appendices A and B, is true and correct in all respects and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(h) Except as may be described in the Preliminary Official Statement and the Official Statement, there is no legal action, or other proceeding, or any investigation or inquiry (before or by any court, agency, arbitrator or other entity or person) pending or, to the knowledge of the Commission or the Lottery Commission, threatened against or affecting the Commission or the Lottery Commission which would restrain or enjoin the issuance or delivery of any of the Bonds or the collection of Revenues pledged under the Resolution or in any way would contest or affect the organization or existence of the Commission or the Lottery Commission or the entitlement of any officers of the Commission or the Lottery Commission to their respective offices or which may reasonably be expected to have a material and adverse effect upon (A) the due performance by the Commission or the Lottery Commission of the transactions contemplated by the Bond Documents, (B) the validity or enforceability of the Bonds, the Commission Documents, the Bond Documents, or any other agreement or instrument to which the Commission or the Lottery Commission is a party and that is used or contemplated for use in consummation of the transactions contemplated hereby and thereby or (C) the exclusion of the interest on the Bonds from gross income for federal income tax purposes and the exemption from State income taxation of the Bonds and interest thereon as set forth in the Official Statement. Neither the Commission nor the Lottery Commission is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that may reasonably be expected to have such an effect.

(i) The Commission has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Commission is a Commission whose arbitrage certifications may not be relied upon.

(j) The Bond Documents, when executed and delivered by, the Commission, will be, and this Bond Purchase Agreement constitutes, the legal, valid and binding obligations of the Commission, enforceable in accordance with their terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and as to the availability of equitable remedies.

(k) When the Bonds are issued, sold and delivered to the Underwriter, the representations and certifications of the Commission herein and in the other Bond Documents will be true, accurate and complete.

(l) The audited financial statements for the year ended June 30, 2003, contained in the Preliminary Official Statement and the Official Statement as Appendix B presents fairly the financial position of Commission's University System Bonds and College System Bonds at the date indicated and the results of operations for the period specified, and such financial statements; have been prepared in conformity with generally accepted accounting principles (or, alternatively,

generally accepting auditing principles) consistently applied in all material respects to the periods involved, except as otherwise stated in the notes thereto. The Lottery Commission no reason to believe that, the financial statements relating to the West Virginia Lottery included as Appendix D in the Official Statement do not fairly present the respective financial positions and results of operations of the West Virginia Lottery as of the dates and for the periods therein set forth, and such financial statements; have been prepared in conformity with generally accepted accounting principles (or, alternatively, generally accepting auditing principles) consistently applied in all material respects to the periods involved, except as otherwise stated in the notes thereto.

(m) Since June 30, 2003, there has been no material adverse change in the financial position or results of operations of the Commission or the Lottery Commission, nor has the Commission or the Lottery Commission incurred any material liabilities except as set forth in the Preliminary Official Statement and the Official Statement or disclosed to the Underwriter in writing.

(n) The Commission deems the Preliminary Official Statement to be final as of its date in accordance with subsection (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Commission deems the Official Statement to be final and complete as of its date for purposes of subsection (b)(3) of such Rule.

(o) Except as described in the Official Statement and Preliminary Official Statement, the Commission is in compliance with all continuing disclosure agreements or certificates heretofore delivered by the Commission in connection with the issuance of any Prior Bonds.

6. Covenants.

6.1 The Commission hereby makes the following covenants with the "Underwriter":

(a) The Commission will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Underwriter.

(b) Prior to the Closing Date, the Commission will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of, the Commission Documents or the Bond Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing Date, the Commission will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interest which will be pledged pursuant to the Commission Documents or the Bond Documents.

(d) The Commission will promptly advise the Underwriter of any matter arising or occurring or discovered before Closing or within 90 days after the end of the underwriting period for the Bonds (within the meaning of Rule 15c2-12 under the Exchange Act) that if existing or known at the date hereof would render any of the representations or warranties set forth herein to be

untrue or misleading or might adversely affect the correctness or completeness of any statement of a material fact contained in the Official Statement.

(e) If as the result of any matters described in paragraph (d) of this Section it becomes necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Commission will, upon notice thereof, promptly prepare and furnish to the Underwriter (at the expense of the Commission) a reasonable number of copies of an amendment of, or a supplement to, the Official Statement (in form and substance satisfactory to the Underwriter) so that, as amended or supplemented, it will not contain any untrue statement of a material fact or omit to state a material fact that is necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(f) Except as disclosed in the Official Statement, prior to the Closing Date, the Commission will obtain or cause to be obtained all governmental consents, approvals, orders or authorizations (other than state securities law clearances) of any governmental authority or agency that would constitute a condition precedent to the performance by Commission of its obligations under the Resolution, the Bond Documents or the Bonds.

(g) The Commission will not voluntarily undertake any course of action inconsistent with the satisfaction of the requirements applicable to it as set forth in the Bond Documents.

(h) The Commission will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter might designate, the cost of which will be borne by the Underwriter, as provided in Section 10.2(iii) below.

(i) The Commission will not, except as required by law, take or omit to take any action which, under existing law, adversely affects the exemption from federal income taxation of the interest on the Bonds, or adversely affects the West Virginia State tax exemptions with respect to the Bonds and the interest thereon, as set forth in the Official Statement.

(j) The Commission agrees to comply with all provisions of the Continuing Disclosure Agreement.

7. Conditions of Closing.

7.1 The obligations of the Underwriter to consummate the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 7.2 hereof and to the satisfaction (unless waived by the Underwriter in its sole discretion) of the following conditions:

(a) The representations and warranties made by the Commission in this Bond Purchase Agreement shall be true and correct as of the Closing Date as if made on such date.

(b) The Commission shall have performed and complied with all agreements and conditions required by this Bond Purchase Agreement to be performed or complied with prior to closing.

(c) The Bond Documents each shall have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing Date except as may have been agreed to in writing by the Underwriter.

(d) The proceeds of the sale of the Bonds shall be applied as described in the Official Statement.

7.2 In addition to the conditions set forth in Section 7.1, the obligations of the Underwriter to consummate the transactions on the Closing Date contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Spilman Thomas & Battle, PLLC, Bond Counsel, in form and substance satisfactory to the Underwriter, dated the Closing Date with respect to the validity and tax-exempt nature of the Bonds, and a supplementary opinion of Bond Counsel, dated the date of Closing, addressed to the Underwriter, to the effect that: (i) this Bond Purchase Agreement has been duly authorized, executed and delivered by the Commission, (ii) the Official Statement has been duly approved, signed and delivered by the Commission, (iii) assuming due authorization, execution and delivery by the other parties thereto, the Bond Documents have been duly authorized, executed, acknowledged and delivered by the Commission, and are legal, valid and binding agreements of the Commission enforceable in accordance with their respective terms (except as enforcement of remedies may be limited by bankruptcy, insolvency or other laws and equitable principles affecting the right of creditors), (iv) the statements contained in the Official Statement under the captions "Introductory Statement," "The 2004 B Bonds," "Security for the 2004 B Bonds," (excepting matters as to Depository Trust Company and the Book-Entry-Only System) "Tax Matters," "Amendments to the Resolution," Appendix G - Summary of Certain Provisions of the Principal Documents," and "Appendix H - Proposed Form of Opinion of Bond Counsel" do not contain any untrue statement of a material fact or omit to state a material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading in any material respect, and (v) the Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Indenture is exempt from qualification as an indenture pursuant to the Trust Indenture Act of 1939, as amended.

(b) An opinion of Bruce R. Walker, Counsel to the Commission, addressed to, among others, Bond Counsel, the Bond Insurer and the Underwriter, in form and substance satisfactory to Bond Counsel and the Underwriter, dated the Closing Date, to the effect that: (i) no litigation is pending or, to his knowledge, threatened (a) to restrain or enjoin the issuance or delivery of any of the Bonds or the collection of Revenues pledged under the Commission Documents and the Bond Documents, (b) in any way contesting the power or the authority of the Commission for the issuance of the Bonds or the validity of the Bonds, or the Bond Documents, (c) in any way contesting the existence or powers of the Commission relating to the issuance of the Bonds, (ii) to

the best of his knowledge, no event affecting the Commission has occurred since the date of the Official Statement that should be disclosed in the Official Statement for the purpose for which it is to be used or that is necessary to disclose therein in order to make the statements and information therein with respect to the Commission not misleading in any material respect, (iii) the Commission is a commission of the State existing under the provisions of the Act, and has full legal right, power and authority to enter into the Bond Documents and each constitutes the legal, valid and binding agreement of the Commission enforceable in accordance with its respective terms (subject to bankruptcy, insolvency and other laws affecting the rights of creditors generally and to general principles of equity), and compliance with the provisions of each thereof will not conflict with or constitute a violation or breach of or default under any existing law or administrative rule or regulation, or any court order or decree or any agreement, contract or other instrument, to which the Commission is party or otherwise subject or bound, (v) the Official Statement has been duly approved, executed and delivered by the Commission, and (vi) the statements contained in the Official Statement under the captions "PLAN OF FINANCE," "THE COMMISSION," "REGULAR STUDENT FEES," "CAPITAL BUDGETING AND PLANNING," "STATE APPROPRIATIONS FOR HIGHER EDUCATION," "STUDENT ENROLLMENT," "LITIGATION," and "Continuing Disclosure" (as such information pertains to the Commission) do not contain any untrue statement of a material fact or omit to state a material fact necessary to make such statements, in light of the circumstances under which they were made, not misleading in any material respect.

(c) An opinion of Goodwin & Goodwin, LLP, Counsel to the Underwriter, in form and substance satisfactory to the Underwriter, addressed to the Underwriter and the Bond Insurer.

(d) A certificate of the Commission, dated the Closing Date, signed by an officer of the Commission to the effect that (i) the representations and warranties made by the Commission in this Bond Purchase Agreement are true and correct as of the Closing Date with the same effect as if made on the Closing Date; (ii) the Commission has performed and complied with all agreements and conditions required by this Bond Purchase Agreement to be performed or complied with by it at or prior to the Closing Date; (iii) since the respective dates as of which information is given in the Official Statement, and except as set forth therein, there has not been any material or adverse change in the Commission's condition, financial or otherwise; (iv) the Official Statement, insofar as it relates to the Commission, including, but not limited to the statements under the captions "ESTIMATED SOURCES AND USES OF FUNDS" and "DEBT SERVICE REQUIREMENTS" "HISTORICAL and "ESTIMATED PLEDGED REVENUES AND DEBT SERVICE COVERAGE" does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, (v) that subsequent to June 30, 2003, the date the most recent general purpose audited financial statements included as Appendix B of the Official Statement, there has been no material adverse change in the financial position or results of operations of the Commission, (vi) that no litigation is pending or, to the knowledge of the Commission, threatened against the Commission or its officers (A) to restrain or enjoin issuance or delivery of any of the Bonds or the collection of Revenues pledged under the Resolution, (B) in any way contesting or affecting any authority for the issuance of the Bonds, or the validity of the Bonds, or the Bond Documents, (C) in any way contesting or affecting the existence or powers of the

Commission or its ability to perform its obligations under the Bond Documents, or (D) that may materially adversely affect the financial condition or operations of the Commission, (vii) that the Commission has satisfied all conditions pertaining to the issuance of the Bonds pursuant to the Commission Documents and all other applicable provisions, and (viii) that no event affecting the Commission, or the transactions contemplated by the Official Statement or the Bond Documents has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used, or which it is necessary to disclose therein in order to make the statements and information therein, in the light of the circumstances under which they were made, not misleading.

(e) A certificate dated the date of the Closing and signed by the Director of the West Virginia Lottery (or such other officers or officials of the West Virginia Lottery as the Underwriters and their counsel may approve), dated as of the date of Closing, to the effect that (1) since June 30, 2003 there has not been any material adverse change in the properties, financial position or results of operations of the West Virginia Lottery, whether or not arising from transactions in the ordinary course of business, other than as set forth in the Official Statement; and since such date the West Virginia Lottery has not entered into any transaction or incurred any material liability as to the West Virginia Lottery, except as set forth in the Official Statement; (2) there are not pending or, to their knowledge, threatened, legal or administrative proceedings to which the West Virginia Lottery is a party or to which property of the West Virginia Lottery is subject, which are material as to the West Virginia Lottery and not disclosed in the Official Statement or which will materially and adversely affect the transactions contemplated hereby or by the Official Statement or which will materially and adversely affect the validity or enforceability of the Bonds or this Agreement; (3) the information contained in the Official Statement relating to the West Virginia Lottery, their organization, activities, properties or financial condition, including, but not limited to the statements contained in the Official Statement under the caption "WEST VIRGINIA LOTTERY," and in Appendix C – "West Virginia Lottery" is true and correct in all material respects and does not contain any untrue or incorrect statement of material fact and does not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; and (4) if, at any time prior to receipt of notice from the Underwriters pursuant to Section 5(d) hereof that Final Official Statements are no longer required to be delivered under the Rule, any event occurs (including events of which such officer has received notice by any means) as a result of which the Preliminary Official Statement or the Final Official Statement as then amended or supplemented might include an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, such officer shall promptly notify the Underwriters thereof and, upon request of the Underwriters, shall assist in the preparation of an amendment or supplement which will correct such statement or omission at the expense of the Underwriters.

(f) A Certificate dated as of the Closing Date signed by an authorized officer of the Commission, sufficient in form and substance to show to the satisfaction of Bond Counsel and the Underwriter that the Bonds will not be arbitrage bonds under Section 148 of the Code and the regulations thereunder, which certificate shall conform to the requirements of said regulations.

(g) A certified copy of the Commission Documents authorizing the execution and delivery by the Commission of the Bond Documents, certified by its Secretary.

(h) One executed original of each of the Bond Documents.

(i) The executed IRS Form 8038-G to be filed with the Internal Revenue Service.

(j) Evidence satisfactory to the Underwriter that the financial guaranty insurance policy relating to the Bonds issued by Financial Guaranty Insurance Company (the "Bond Insurer") has been delivered to the Trustee.

(k) Evidence satisfactory to the Underwriter that the Bonds have been rated Aaa by Moody's Investors Service ("Moody"") and AAA by Standard & Poor's Ratings Group, a division of the McGraw Hill Companies, Inc. ("S & P") and that the Bonds have received an underlying rating of A1 by Moody's and "A+" by S & P.

(l) A verification report from Causey Demgen & Moore, Inc., verifying the accuracy of the arithmetical computations of the adequacy of maturing amounts of principal and interest on the government obligations placed in escrow to pay, when due, the principal of, premium, if any, and the interest on the Refunded Bonds.

(m) Evidence of adoption by the Commission of the Third Consolidated Resolution.

(n) Such additional legal opinions, certificates and other documents as the Underwriter or Bond Counsel reasonably may deem necessary to evidence the truth and accuracy as of the Closing Date of the representations and warranties of the Commission herein contained and of the Official Statement, and to evidence compliance by the Commission with this Bond Purchase Agreement and all applicable legal requirements, and the due performance and satisfaction by the Commission at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by either of them.

7.3 If any of the conditions set forth in Section 7.1 or 7.2 has not been met on the Closing Date, the Underwriter may, in its sole discretion, terminate this Bond Purchase Agreement or proceed to Closing upon waiving any rights under this Bond Purchase Agreement with respect to any such condition. If this Bond Purchase Agreement is terminated pursuant to this Section, neither party will have any rights nor obligations to the other, except as provided in Sections 10 and 11 herein.

8. Actions and Events at the Closing. The following events will take place at closing:

(a) The Commission will direct the Trustee to authenticate and deliver the Bonds to the Underwriter, at the place established pursuant to Section 2 herein. Each of the Bonds so delivered will be in definitive form or, with the consent of the Underwriter, in temporary form, duly executed on behalf of the Commission, in denominations or maturity amounts of five thousand dollars ($5,000) or any integral multiple thereof, and will be fully registered in such names and amounts as the Underwriter will request at least four (4) business days prior to the Closing Date. In the event

the Bonds are delivered in temporary form, the Commission shall deliver the Bonds in definitive form on such date as the Underwriter may reasonably require.

(b) The Commission will deliver or cause to be delivered at Closing to the Underwriter the documents described in Section 7.2 hereof.

(c) The Underwriter will deliver to the Trustee, for the account of the Commission, immediately available funds in an amount equal to the purchase price of the Bonds set forth as the Purchase Price in Exhibit A hereto.

9. Termination of Bond Purchase Agreement. The Underwriter may terminate this Bond Purchase Agreement without liability therefor (except as provided under Section 10) by notice to the Commission at any time at or prior to the Closing if:

(a) Any legislation is introduced in, or enacted by, the United States Congress, or shall have been reported out of committee, or any decision is rendered by any court of competent jurisdiction or any ruling or regulation, temporary regulation, release or announcement shall have been issued or proposed by the Treasury Department of the United States, the Internal Revenue Service, or any other agency of the government of the United States that, in the reasonable opinion of the Underwriter, has the purpose or effect of subjecting interest on the Bonds to inclusion in gross income for federal income tax purposes or has a material and adverse effect upon the ability of the Underwriter to sell the Bonds at the contemplated offering prices;

(b) Any legislation, ordinance, rule or regulation is introduced in, or enacted by, any governmental body, department or agency of the State of West Virginia, or shall have been reported out of committee, or a decision by any court of competent jurisdiction within the State of West Virginia is rendered, that, in the reasonable opinion of the Underwriter, has the purpose or effect of subjecting the Bonds or the interest thereon to West Virginia State income taxation or otherwise has a material and adverse effect upon the ability of the Underwriter to sell the Bonds at the contemplated offering prices;

(c) Any other action or event shall exist or have transpired which has the purpose or effect, directly or indirectly, of materially adversely affecting the federal or West Virginia income tax consequences of the transactions contemplated by the Official Statement, and in the reasonable opinion of the Underwriter, materially adversely affects the market for the Bonds or the sale at the contemplated offering prices by the Underwriter of the Bonds;

(d) Any fact exists or any event occurs that, in the reasonable opinion of the Underwriter, makes untrue or incorrect in any material respect any statement or information in the Official Statement or causes the Official Statement to contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading for the purposes for which the Official Statement is to be used;

(e) Any amendment of or supplement to the Official Statement is distributed (whether or not such amendment or supplement was approved by the Underwriter prior to its distribution) which, in the reasonable opinion of the Underwriter, has a material and adverse effect upon the ability of the Underwriter to sell the Bonds at the contemplated offering prices;

(f) There shall have occurred any outbreak, continuation or resumption of hostilities, whether declared or undeclared, or other national or international calamity or crisis, which, in the reasonable opinion of the Underwriter, has a material and adverse effect upon the ability of the Underwriter to sell the Bonds at the contemplated offering prices;

(g) Any legislation is introduced in, or enacted by the United States Congress, or any action is taken by, or on behalf of, the Securities and Exchange Commission, that in the opinion of the Underwriter has the effect of requiring (i) the registration of a security under the Securities Act of 1933, as amended, or the qualification of an indenture under the Trust Indenture Act of 1939, as amended, in connection with the offering and sale of the Bonds or (ii) any governmental consents, approvals, orders or authorizations for the consummation of the transactions contemplated by this Bond Purchase Agreement, the Official Statement, or the other Bond Documents, which cannot, without undue expense, be obtained prior to the Closing Date;

(h) There shall have occurred a general suspension of trading on the New York Stock Exchange, or a general banking moratorium is declared by the United States or by the State of West Virginia authorities, that, in the reasonable opinion of the Underwriter, has a material and adverse effect upon the ability of the Underwriter to sell the Bonds at the contemplated offering prices;

(i) Any fact exists or any event occurs that is not disclosed in the Preliminary Official Statement which after disclosure in the Official Statement affects the ability of the Underwriter to sell the Bonds at the contemplated offering prices; or

(j) Moody's or S & P shall have notified the Underwriter that either of their respective ratings of the Bonds will be lower than that set forth above.

10. Expenses.

10.1 The Commission will pay or cause to be paid from proceeds of the Bonds or otherwise (i) fees and expenses of bond counsel, counsel to the Commission, and Underwriter's counsel; (ii) premiums for bond insurance and/or costs in connection with other credit enhancement for the Bonds; (iii) rating agency fees; (iv) initial fees of the Registrar and Paying Agent; (v) costs of preparing, printing, mailing and delivering the Preliminary Official Statement and the Official Statement and any amendments or supplements thereto; and (vii) any other costs and expenses of the issue not set forth in Section 10.2 below. The Commission shall pay for expenses (included in the expense component of the spread) incurred that are incidental to implementing this agreement, including, but not limited to, meals, transportation and lodging.

10.2 The Underwriter will pay (i) sales commissions associated with marketing the Bonds; (ii) costs of qualification of the Bonds for sale under the securities or "Blue Sky" laws of

various jurisdictions; (iii) initial fees relating to The Depository Trust Company; and (iv) costs and expenses incurred by the Underwriter in connection with the preparation, offering and distribution of the Bonds, including but not limited to advertising, local and long distance telephone, and travel expenses, as well as management fees in connection with such offering.

10.3 In the event that the Commission or the Underwriter shall have temporarily paid obligations of the other as set forth in this Section, appropriate adjustments will promptly be made.

10.4 Nothing herein will limit the rights of the Commission to take action against the Underwriter for default of its responsibilities hereunder or for its actions or inactions regarding the matters contemplated herein.

11. Indemnification.

11.1 To the extent permitted by the laws of the State, the Commission agrees to indemnify and hold harmless the Underwriter, each director, officer, attorney, agent or employee of the Underwriter, and each person, if any, who controls the Underwriter within the meaning of the Securities Act of 1933, as amended, or within the meaning as determined by the Office of the Comptroller of the Currency (each hereafter, an "Indemnified Party"), from and against all losses, claims, damages, liabilities, settlements and expenses, joint or several, to which each Indemnified Party may become subject, under federal laws or regulations or otherwise, insofar as such losses, claims, damages, liabilities, settlements and expenses, or actions in respect thereof (i) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact pertaining to the Commission as set forth in the Official Statement, or any amendment or supplement thereto, or the Preliminary Official Statement, or arise out of or are based upon the omission or alleged omission to state therein a material fact pertaining to the Commission required to be stated therein or necessary to make the statements therein not misleading, or (ii) arise out of or are based upon any claim that the issuance of the Bonds violated any requirements contained in pre-existing bond documents, and the Commission will assume the defense of any action against any Indemnified Party based upon allegations of any such loss, claim, damage, liability or action, including the retaining of counsel approved by the Indemnified Party (which approval shall not be unreasonably withheld) and the payment of reasonable counsel fees and all other expenses relating to such defense, provided, however, that each Indemnified Party may retain separate counsel in any such action and may participate in the defense thereof (at its expenses, unless the retention of such counsel has been specifically authorized by the Commission); and provided further, that the Commission will not be liable to the Underwriter or any Indemnified Party related to it, in any such case to the extent that any such loss, claim, damage, liability and expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in any such documents under the caption "Underwriting."

11.2 Promptly after receipt by an Indemnified Party under this Bond Purchase Agreement of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the Commission under this Bond Purchase Agreement, notify the Commission of the commencement thereof, but failure to give such notice shall not relieve the Commission of its indemnification obligations under this Bond Purchase Agreement unless and to

the extent that such failure causes actual harm or prejudice to the Commission. In case any such action is brought against any Indemnified Party, and it notifies the Commission of the commencement thereof, the Commission (i) will assume the defense thereof if and as required under this Bond Purchase Agreement, with counsel satisfactory to the Indemnified Party or (ii) if not required to assume the defense, will be entitled to participate in, and, to the extent that it may wish, jointly with any other Indemnifying Party similarly notified, to assume the defense thereof, with counsel satisfactory to such Indemnified Party. After notice from the Commission to such Indemnified Party of its assumption of the defense, the Commission will not be liable to such Indemnified Party in connection with the defense thereof other than for reasonable expenses incurred by the Indemnified Party and its counsel, reimbursement of out-of-pocket expenses and other reasonable costs of investigation or participation in the defense of the claim. Payment of any claim hereunder shall be made solely from Revenues.

12. Miscellaneous.

12.1 All notices, demands and formal actions hereunder will be written and mailed, faxed or e-mailed or delivered to the following address or such other address as either of the parties shall specify:

IF TO THE COMMISSION:

West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Suite 700
Charleston, West Virginia 25301
Attention: Chancellor

IF TO THE REGISTRAR AND PAYING AGENT:

J.P. Morgan Trust Company, National Association
1 Oxford Centre
301 Grant Street
Pittsburgh, Pennsylvania
Attention: Corporate Trust Division

IF TO THE MUNICIPAL BOND COMMISSION
West Virginia Municipal Bond Commission
812 Quarrier Street
Charleston, West Virginia 25301
Attention: Executive Director

IF TO THE UNDERWRITER:

Citigroup Global Markets Inc.
390 Greenwich Street, 2nd Floor
New York, New York 10013

Ferris, Baker Watts, Incorporated
100 Laidley Tower
500 Lee Street
Charleston, WV 25301

Crews & Associates, Inc.
2001 Union National Plaza
124 West Capitol
Little Rock, Arkansas 72201

IF TO THE RATING AGENCIES:

Moody's Investors Service
99 Church Street
New York, New York 10007
Attention: Public Finance Department

Standard & Poor's Rating Group
25 Broadway
New York, New York 10004
Attention: Education Group

IF TO THE BOND INSURER:

Financial Guaranty Insurance Company
125 Park Avenue
New York, New York 10017
Attention: Risk Management

IF TO THE FISCAL AGENT FOR THE BOND INSURER:

U.S. Bank Trust National Association
100 Wall Street, 19th floor
New York, New York 10003
Attention: Corporate Trust Department

12.2 This Bond Purchase Agreement will inure to the benefit of and be binding upon the parties hereto and their successors and will not confer any rights upon any other person. The term "successor" will not include any purchaser of any of the Bonds from the Underwriter merely

because of such purchase. All representations, warranties and agreements in this Bond Purchase Agreement shall remain operative and in full force and effect, regardless of (a) delivery of and payment for the Bonds hereunder, and (b) any termination of this Bond Purchase Agreement including, but not limited to, the indemnity agreements contained in Section 11 and the continuing disclosure agreement contained in Section 6.1.

12.3 This Bond Purchase Agreement may not be assigned by any of the parties hereto.

12.4 If any provision of this Bond Purchase Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperable or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatever.

12.5 The payment for, acceptance of, and delivery and execution of any receipt for the Bonds and any other instruments upon or in connection with the closing by the Underwriter will be valid and sufficient for all purposes and binding upon the Underwriter. No such action by the Underwriter will impose any obligation or liability upon the Underwriter, other than as may arise as expressly set forth in this Bond Purchase Agreement.

12.6 Whenever any action contemplated by this Bond Purchase Agreement requires the consent or approval of the Underwriter, it is acknowledged that the Underwriter may not unreasonably withhold such approval.

12.7 This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia applicable to agreements to be performed wholly therein. The parties hereto intend to be legally bound hereby.

12.8 This Bond Purchase Agreement may be executed in several counterparts, each of which will be regarded as an original and all of which will constitute one and the same document.

12.9 No personal recourse shall be had for any claim based on this Bond Purchase Agreement or the Bonds against any member, officer, agent or employee, past, present or future, of the Commission or any successor body or entity as such, either directly or through the Commission or any such successor body or entity, under any constitutional provision, statute, or rule of law or by the enforcement of an assessment or penalty or otherwise.

CITIGROUP GLOBAL MARKETS INC., acting on behalf of itself, Ferris, Baker Watts, Incorporated and Crews & Associates, Inc.

By: _____
Director

Accepted as of the date first above written:

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: _____

Its: _____

Approved as to matters set forth in Sections 5(h), 5(l) And 5(m) of this Purchase Contract

WEST VIRGINIA LOTTERY COMMISSION

By _____

Its _____

CITIGROUP GLOBAL MARKETS INC., acting on behalf of itself, Ferris, Baker Watts, Incorporated and Crews & Associates, Inc.

By: _____
Director

Accepted as of the date first above written:

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: _____

Its: Chairman

Approved as to matters set forth in Sections 5(h), 5(l) And 5(m) of this Purchase Contract

WEST VIRGINIA LOTTERY COMMISSION

By _____

Its _____

CITIGROUP GLOBAL MARKETS INC., acting on behalf of itself, Ferris, Baker Watts, Incorporated and Crews & Associates, Inc.

By: _____
Director

Accepted as of the date first above written:

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: _____

Its: _____

Approved as to matters set forth in Sections 5(h), 5(l) And 5(m) of this Purchase Contract

WEST VIRGINIA LOTTERY COMMISSION

By _____

Its Director

EXHIBIT A

$167,260,000
STATE OF WEST VIRGINIA
HIGHER EDUCATION POLICY COMMISSION
Revenue Bonds
(Higher Education Facilities)
2004 Series B

Dated Date: Date of Delivery

Closing Date: August 31, 2004

Maturity	Principal	Coupon	Yield	Price
4/1/2005	5,710,000	6.000%	1.320%	102.709
4/1/2006	2,680,000	5.000%	1.620%	105.261
4/1/2007	3,535,000	2.100%	2.130%	99.924
4/1/2008	3,615,000	5.000%	2.520%	108.444
4/1/2009	3,795,000	2.800%	2.820%	99.913
4/1/2010	3,900,000	3.000%	3.040%	99.794
4/1/2011	2,375,000	5.000%	3.260%	110.231
4/1/2011	1,640,000	3.250%	3.260%	99.939
4/1/2012	4,190,000	5.000%	3.440%	110.332
4/1/2013	4,400,000	5.000%	3.630%	110.023
4/1/2014	4,620,000	5.000%	3.740%	110.066
4/1/2015	4,850,000	5.000%	3.870%	108.973
4/1/2016	5,090,000	5.000%	3.950%	108.306
4/1/2017	4,155,000	5.000%	4.030%	107.644
4/1/2018	4,360,000	5.000%	4.110%	106.987
4/1/2019	4,580,000	5.000%	4.200%	106.254
4/1/2020	4,810,000	5.000%	4.280%	105.607
4/1/2021	5,050,000	5.000%	4.370%	104.886
4/1/2022	5,300,000	5.000%	4.440%	104.328
4/1/2023	5,565,000	5.000%	4.520%	103.696
4/1/2024	5,845,000	5.000%	4.600%	103.068

$33,910,000 5.000% Term Bonds due April 1, 2029 at 4.820% (Price: 101.364)*

$43,285,000 5.000% Term Bonds due April 1, 2029 at 4.850% (Price: 101.134)*

* *Priced to call.*

Redemption Provisions:

(a) Optional Redemption of the 2004 B Bonds. The 2004 B Bonds maturing on or after April 1, 2015 are subject to redemption at the option of the Commission, prior to maturity, on and after April 1, 2014, in whole or in part at any time from amounts deposited with the Paying Agent by the Commission and from other funds available therefore at the a redemption price of par, plus accrued interest to the date fixed for redemption.

(b) Mandatory Sinking Fund Redemption of the 2004 B Bonds. The 2004 B Bonds maturing April 1, 2029 and April 1, 2034 shall be subject to mandatory annual sinking fund redemption of principal on April 1, in the years and in the amounts set forth below, without premium, plus interest accrued to the dates of such redemption:

2004 B Bonds due April 1, 2029

Year	Principal Amount
2025	$6,135,000
2026	6,445,000
2027	6,765,000
2028	7,105,000
2029 (Maturity)	7,460,000

2004 B Bonds due April 1, 2034

Year	Principal Amount
2030	$7,835,000
2031	8,225,000
2032	8,635,000
2033	9,070,000
2034 (Maturity)	9,520,000

Purchase Price: $172,554,973.40, comprised of par ($167,260,000), plus net original issue premium of $6,018,720.40, less underwriter's discount of $723,747.00.