

**WEST VIRGINIA CODE**
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§18B-1-6. Rulemaking.

(a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article.

(b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

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

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

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

(3) The commission and council each shall promulgate a rule to guide the development and approval of rules made by their respective governing boards, including the governing boards of Marshall University and West Virginia University. The rules promulgated by the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

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

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

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

(D) A procedure for the governing board to follow in submitting its rules for review and approval to the commission and/or council, as appropriate, except the following conditions apply for the governing boards of Marshall University and West Virginia University:

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

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

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

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

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

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

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

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

(g) Within thirty days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall

furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review and approval, except the governing boards of Marshall University and West Virginia University are subject to subsection (c) of this section.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended or repealed by the governing board. For all rules adopted, amended or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted. *Note: WV Code updated with legislation passed through the [2012 1st Special Session](#).*

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