

H. B. 3017

(By Delegates M. Poling, Paxton, Perry, Smith,
Shaver, Duke, Ennis, Craig, Pethtel and Williams)

[Introduced February 4, 2011; referred to the
Committee on Education then Finance.]

BILL to repeal §18-23-4a of the Code of West Virginia, 1931, as amended; to repeal §18B-8-3a of said code; to repeal §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code; to amend and reenact §18B-1-2 of said code; to amend and reenact §18B-1B-4 and §18B-1B-5 of said code; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-2B-3 of said code; to amend and reenact §18B-3-3 of said code; to amend and reenact §18B-4-1 of said code; to amend said code by adding thereto a new section, designated §18B-4-2a; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code; to amend said code by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; to amend and reenact §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code; to amend said code by adding thereto a

1 new section, designated §18B-8-2; to amend and reenact §18B-9-
2 1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; and to amend
3 said code by adding thereto a new article, designated §18B-9A-
4 1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6,
5 §18B-9A-7 and §18B-9A-8, all relating to cleaning up and
6 adding language about higher education governance; fixing
7 citations and clearing up the duties of the Higher Education
8 Policy Commission; adding position of Vice Chancellor for
9 Human Resources to the Higher Education Policy Commission;
10 adding duties to higher education governing boards;
11 compensation of chief executive of system of community and
12 technology colleges; higher education personnel generally; and
13 higher education faculty pay, seniority and leave rules
14 generally.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §18-23-4a of the Code of West Virginia, 1931, as amended,
17 be repealed; that §18B-8-3a of said code be repealed; that §18B-9-
18 2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12
19 of said code be repealed; that §18B-1-2 of said code be amended and
20 reenacted; that §18B-1B-4 and §18B-1B-5 of said code be amended and
21 reenacted; that §18B-2A-3 and §18B-2A-4 of said code be amended and
22 reenacted; that §18B-2B-3 of said code be amended and reenacted;
23 that §18B-3-3 of said code be amended and reenacted; that §18B-4-1
24 of said code be amended and reenacted; that said code be amended by

1 adding thereto a new section, designated §18B-4-2a; that §18B-7-1,
 2 §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-
 3 8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code be
 4 amended and reenacted; that said code be amended by adding thereto
 5 four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and
 6 §18B-7-16; that §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6
 7 of said code be amended and reenacted; that said code be amended by
 8 adding thereto a new section, designated §18B-8-2; that §18B-9-1,
 9 §18B-9-2, §18B-9-3 and §18B-9-4 of said code be amended and
 10 reenacted; and that said code be amended by adding thereto a new
 11 article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4,
 12 §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8, all to read as
 13 follows:

14 **CHAPTER 18B. HIGHER EDUCATION.**

15 **ARTICLE 1. GOVERNANCE.**

16 **§18B-1-2. Definitions.**

17 The following words when used in this chapter and chapter
 18 eighteen-c of this code have the meanings ascribed to them unless
 19 the context clearly indicates a different meaning:

20 (a) "Governing boards" or "boards" means the institutional
 21 boards of Governors created ~~pursuant to~~ by section one, article
 22 two-a of this chapter;

23 (b) "Free-standing community and technical colleges" means
 24 Southern West Virginia Community and Technical College, West

1 Virginia Northern Community and Technical College, and Eastern West
2 Virginia Community and Technical College, which may not be operated
3 as branches or off-campus locations of any other state institution
4 of higher education;

5 (c) "Community and technical college", in the singular or
6 plural, means the free-standing community and technical colleges
7 and other state institutions of higher education which deliver
8 community and technical college education. This definition
9 includes ~~Southern West Virginia Community and Technical College,~~
10 ~~West Virginia Northern Community and Technical College, Eastern~~
11 ~~West Virginia Community and Technical College, New River Community~~
12 ~~and Technical College, West Virginia University at Parkersburg,~~
13 ~~The Community and Technical College at West Virginia University~~
14 ~~Institute of Technology, Blue Ridge Community and Technical~~
15 ~~College, Marshall Community and Technical College, West Virginia~~
16 ~~State Community and Technical College and Pierpont Community and~~
17 ~~Technical College~~ Blue Ridge Community and Technical College,
18 Bridgemont Community and Technical College, Eastern West Virginia
19 Community and Technical College, Kanawha Valley Community and
20 Technical College, Mountwest Community and Technical College, New
21 River Community and Technical College, Pierpont Community and
22 Technical College, Southern West Virginia Community and Technical
23 College, West Virginia Northern Community and Technical College and
24 West Virginia University at Parkersburg;

1 (d) "Community and technical college education" means the
2 programs, faculty, administration and funding associated with the
3 delivery of community and technical college education programs;

4 (e) "Essential conditions" means those conditions which shall
5 be met by community and technical colleges as provided in section
6 three, article three-c of this chapter;

7 (f) "Higher education institution" means any institution as
8 defined by Sections 401(f), (g) and (h) of the federal Higher
9 Education Facilities Act of 1963, as amended;

10 (g) "Higher Education Policy Commission", "Policy Commission"
11 or "Commission" means the commission created ~~pursuant to~~ by section
12 one, article one-b of this chapter;

13 (h) "Chancellor for Higher Education" means the chief
14 executive officer of the Higher Education Policy Commission
15 employed pursuant to section five, article one-b of this chapter;

16 (i) "Chancellor for Community and Technical College Education"
17 means the chief executive officer of the West Virginia Council for
18 Community and Technical College Education employed pursuant to
19 section three, article two-b of this chapter;

20 (j) "Chancellor" means the Chancellor for Higher Education
21 where the context refers to a function of the Higher Education
22 Policy Commission. "Chancellor" means Chancellor for Community and
23 Technical College Education where the context refers to a function
24 of the West Virginia Council for Community and Technical College

1 Education;

2 (k) "Institutional operating budget" or "operating budget"
3 means for any fiscal year an institution's total unrestricted
4 education and general funding from all sources, ~~in the prior fiscal~~
5 ~~year,~~ including, but not limited to, tuition and fees and
6 legislative appropriation, and any adjustments to that funding as
7 approved by the commission or council based on comparisons with
8 peer institutions or to reflect consistent components of peer
9 operating budgets;

10 (l) "Community and technical college education program" means
11 any college-level course or program beyond the high school level
12 provided through a public institution of higher education resulting
13 in or which may result in a two-year associate degree award
14 including an associate of arts, an associate of science and an
15 associate of applied science; certificate programs and skill sets;
16 developmental education; continuing education; collegiate credit
17 and noncredit workforce development programs; and transfer and
18 baccalaureate parallel programs. All programs are under the
19 jurisdiction of the council. Any reference to "post-secondary
20 vocational education programs" means community and technical
21 college education programs as defined in this subsection;

22 (m) "Rule" or "rules" means a regulation, standard, policy or
23 interpretation of general application and future effect;

24 (n) "Vice Chancellor for Administration" means the person

1 employed in accordance with section two, article four of this
2 chapter. Any reference in this chapter or chapter eighteen-c of
3 this code to "Senior Administrator" means Vice Chancellor for
4 Administration;

5 (o) "Vice Chancellor for Human Resources" means the person
6 employed in accordance with section two-a, article four of this
7 chapter;

8 ~~(o)~~ (p) "State college" means Bluefield State College, Concord
9 University, Fairmont State University, Glenville State College,
10 Shepherd University, West Liberty ~~State College~~ University or West
11 Virginia State University;

12 ~~(p)~~ (q) "State institution of higher education" means any
13 university, college or community and technical college under the
14 jurisdiction of a governing board as that term is defined in this
15 section;

16 ~~(q)~~ (r) "Board of visitors" means the advisory board
17 previously appointed for the West Virginia Graduate College and the
18 advisory board previously appointed for West Virginia University
19 Institute of Technology, which provide guidance to the Marshall
20 University Graduate College and West Virginia University Institute
21 of Technology, respectively;

22 ~~(r)~~ (s) "Institutional compact" means the compact between the
23 commission or council and a state institution of higher education
24 under its jurisdiction, as described in section six, article one-d

1 of this chapter;

2 ~~(s)~~ (t) "Peer institutions", "peer group" or "peers" means
3 public institutions of higher education used for comparison
4 purposes and selected by the commission pursuant to section three,
5 article one-a of this chapter;

6 ~~(t)~~ (u) "Administratively linked community and technical
7 college" means a state institution of higher education delivering
8 community and technical college education and programs which has
9 maintained a contractual agreement to receive essential services
10 from another accredited state institution of higher education prior
11 to July 1, 2008;

12 ~~(u)~~ (v) "Sponsoring institution" means a state institution of
13 higher education that maintained an administrative link to a
14 community and technical college providing essential services prior
15 to July 1, 2008. This definition includes institutions whose
16 governing boards had under their jurisdiction a community and
17 technical college, regional campus or a division delivering
18 community and technical college education and programs;

19 ~~(v)~~ (w) "Collaboration" means entering into an agreement with
20 one or more providers of education services in order to enhance the
21 scope, quality or efficiency of education services;

22 ~~(w)~~ (x) "Broker" or "brokering" means serving as an agent on
23 behalf of students, employers, communities or responsibility areas
24 to obtain education services not offered at that institution.

1 These services include courses, degree programs or other services
2 contracted through an agreement with a provider of education
3 services either in-state or out-of-state;

4 ~~(x)~~ (y) "Council" means the West Virginia Council for
5 Community and Technical College Education created ~~pursuant to~~ by
6 article two-b of this chapter;

7 ~~(y)~~ (z) "West Virginia Consortium for Undergraduate Research
8 and Engineering" or "West Virginia CURE" means the collaborative
9 planning group established ~~pursuant to~~ by article one-c of this
10 chapter;

11 ~~(z)~~ (aa) "Advanced technology center" means a facility
12 established under the direction of an independent community and
13 technical college or the council for the purpose of implementing
14 and delivering education and training programs for high-skill,
15 high-performance Twenty-first Century workplaces;

16 ~~(aa)~~ (bb) "Statewide network of independently accredited
17 community and technical colleges" or "community and technical
18 college network" means the state institutions of higher education
19 under the jurisdiction of the West Virginia Council for Community
20 and Technical College Education which are independently accredited
21 or are seeking independent accreditation by the regional
22 accrediting agency, each governed by its own independent governing
23 board, and each having a core mission of providing affordable
24 access to and delivering high quality community and technical

1 education in every region of the state;

2 ~~(bb)~~ (cc) "Independent community and technical college" means
3 a state institution of higher education under the jurisdiction of
4 the council which is independently accredited or seeking
5 independent accreditation, is governed by its own independent
6 governing board, and may not be operated as a branch or off-campus
7 location of any other state institution of higher education. This
8 definition includes ~~Blue Ridge Community and Technical College, The~~
9 ~~Community and Technical College at West Virginia University~~
10 ~~Institute of Technology, Eastern West Virginia Community and~~
11 ~~Technical College, Marshall Community and Technical College, New~~
12 ~~River Community and Technical College, Pierpont Community and~~
13 ~~Technical College, Southern West Virginia Community and Technical~~
14 ~~College, West Virginia Northern Community and Technical College,~~
15 ~~West Virginia State Community and Technical College, and West~~
16 ~~Virginia University at Parkersburg~~ Blue Ridge Community and
17 Technical College, Bridgemont Community and Technical College,
18 Eastern West Virginia Community and Technical College, Kanawha
19 Valley Community and Technical College, Mountwest Community and
20 Technical College, New River Community and Technical College,
21 Pierpont Community and Technical College, Southern West Virginia
22 Community and Technical College, West Virginia Northern Community
23 and Technical College and West Virginia University at Parkersburg;
24 and

1 ~~(cc)~~ (dd) "Dual credit course" or "dual enrollment course" ~~is~~
 2 means a credit-bearing college-level course offered in a high
 3 school by a state institution of higher education for high school
 4 students in which the students are concurrently enrolled and
 5 receiving credit at the secondary level.

6 **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

7 **§18B-1B-4. Powers and duties of Higher Education Policy**
 8 **Commission.**

9 (a) The primary responsibility of the commission is to
 10 develop, establish and implement policy that will achieve the
 11 goals, ~~and~~ objectives and priorities found in section one-a,
 12 article one and article one-d of this chapter. The commission
 13 shall exercise its authority and carry out its responsibilities in
 14 a manner that is consistent and not in conflict with the powers and
 15 duties assigned by law to the West Virginia Council for Community
 16 and Technical College Education and the powers and duties assigned
 17 to the governing boards. ~~of Marshall University and West Virginia~~
 18 ~~University, respectively.~~ To that end, the commission has the
 19 following powers and duties relating to the ~~institutions~~ governing
 20 boards under its jurisdiction:

21 (1) Develop, oversee and advance the public policy agenda
 22 pursuant to ~~section one, article one-a~~ article one-d of this
 23 chapter to address major challenges facing the state, including,
 24 but not limited to, the following:

1 (A) The goals, ~~and objectives~~ and priorities ~~found~~ established
2 in ~~section one-a, article one~~ of this chapter and including
3 specifically those goals, ~~and objectives~~ and priorities pertaining
4 to the compacts created pursuant to section ~~two~~ seven, article ~~one-~~
5 a one-d of this chapter; and ~~to develop and implement~~

6 (B) Development and implementation of the master plan
7 described in section ~~nine of this~~ five, article one-d of this
8 chapter for the purpose of accomplishing the mandates of this
9 section;

10 (2) Develop, oversee and advance the promulgation and
11 implementation jointly with the council of a financing policy rule
12 for state institutions of higher education ~~in West Virginia~~ under
13 its jurisdiction. The policy rule shall meet the following
14 criteria:

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

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

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

24 (D) Incorporate the plan for strategic funding to strengthen

1 capacity for support of community and technical college education
2 established by the ~~West Virginia Council for Community and~~
3 ~~Technical College Education~~ pursuant to the provisions of section
4 six, article two-b of this chapter;

5 (3) In collaboration with the council, create a policy
6 leadership structure capable of the following actions:

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

17 (B) Ensuring that the governing boards carry out their duty
18 effectively to govern the individual institutions of higher
19 education; and

20 (C) Holding the ~~higher education institutions~~ governing boards
21 and the higher education systems as a whole accountable for
22 accomplishing their missions and implementing ~~the provisions of the~~
23 their compacts;

24 (4) Develop and adopt each ~~institutional~~ compact for the

1 governing boards under its jurisdiction;

2 (5) Review and adopt the annual updates of the institutional
3 compacts;

4 (6) Serve as the accountability point to state policy leaders:

5 (A) The Governor for implementation of the public policy
6 agenda; and

7 (B) The Legislature by maintaining a close working
8 relationship with the legislative leadership and the Legislative
9 Oversight Commission on Education Accountability;

10 (7) Jointly with the council, promulgate legislative rules
11 pursuant to article three-a, chapter twenty-nine-a of this code to
12 fulfill the purposes of section five, article one-a of this
13 chapter;

14 (8) Establish and implement a peer group for each institution
15 as described in section three, article one-a of this chapter;

16 (9) Establish and implement the benchmarks and performance
17 indicators necessary to measure institutional ~~achievement towards~~
18 progress in achieving state policy priorities and institutional
19 missions pursuant to section ~~two, article one-a~~ seven, article one-
20 d of this chapter;

21 (10) ~~Annually~~ Report to the Legislature and to the Legislative
22 Oversight Commission on Education Accountability annually during
23 the January interim ~~meetings~~ meeting period on a date and at a time
24 and location to be determined by the President of the Senate and

1 the Speaker of the House of Delegates. The report shall address at
2 least the following:

3 (A) The performance of its system of higher education during
4 the previous fiscal year, including, but not limited to, progress
5 in meeting ~~goals stated in the compacts and progress of the~~
6 ~~institutions and the higher education system as a whole in meeting~~
7 the goals, ~~and objectives~~ and priorities set forth in section one-
8 a, article one and article one-d of this chapter and in the
9 commission's master plan and institutional compacts;

10 ~~(B) An analysis of enrollment data collected pursuant to~~
11 ~~section one, article ten of this chapter and recommendations for~~
12 ~~any changes necessary to assure access to high-quality, high-demand~~
13 ~~education programs for West Virginia residents;~~

14 ~~(C)~~ (B) The Commission's priorities ~~established~~ for new
15 operating and capital investment investments ~~needs pursuant to~~
16 ~~subdivision (11) of this subsection and the justification for such~~
17 the priority;

18 ~~(D)~~ (C) Recommendations of the commission for statutory
19 changes ~~needed~~ necessary or expedient to ~~further the~~ achieve state
20 goals, and objectives and priorities; ~~set forth in section one-a,~~
21 ~~article one of this chapter;~~

22 (11) Establish a formal process for identifying ~~needs for~~
23 ~~capital investments~~ investment needs and for determining priorities
24 for these investments for consideration by the Governor and the

1 Legislature as part of the appropriation request process pursuant
2 to article nineteen of this chapter. ~~It is the responsibility of~~
3 ~~the commission to assure a fair distribution of funds for capital~~
4 ~~projects between the commission and the council. To that end the~~
5 ~~commission shall take the following steps:~~

6 ~~(A) Receive the list of priorities developed by the council~~
7 ~~for capital investment for the institutions under the council's~~
8 ~~jurisdiction pursuant to subsection (b), section six, article two-b~~
9 ~~of this chapter;~~

10 ~~(B) Place the ranked list of projects on the agenda for action~~
11 ~~within sixty days of the date on which the list was received;~~

12 ~~(C) Select a minimum of three projects from the list submitted~~
13 ~~by the council to be included on the ranked list established by the~~
14 ~~commission. At least one of the three projects selected must come~~
15 ~~from the top two priorities established by the council;~~

16 ~~(12) Maintain guidelines for institutions to follow concerning~~
17 ~~extensive capital project management except the governing boards of~~
18 ~~Marshall University and West Virginia University are not subject to~~
19 ~~the provisions of this subdivision as it relates to the state~~
20 ~~institutions of higher education known as Marshall University and~~
21 ~~West Virginia University. The guidelines shall provide a process~~
22 ~~for developing capital projects, including, but not limited to, the~~
23 ~~notification by an institution to the commission of any proposed~~
24 ~~capital project which has the potential to exceed one million~~

1 dollars in cost. Such a project may not be pursued by an
2 institution without the approval of the commission. An institution
3 may not participate directly or indirectly with any public or
4 private entity in any capital project which has the potential to
5 exceed one million dollars in cost;

6 (12) Develop standards and evaluate governing board requests
7 for capital project financing in accordance with article nineteen
8 of this chapter;

9 (13) Ensure that governing boards manage capital projects and
10 facilities needs effectively, including review and approval or
11 disapproval of capital projects, in accordance with article
12 nineteen of this chapter.

13 ~~(13)~~ (14) Acquire legal services as ~~are~~ considered necessary,
14 including representation of the commission, its institutions,
15 governing boards, employees and officers before any court or
16 administrative body, notwithstanding any other provision of this
17 code to the contrary. The counsel may be employed either on a
18 salaried basis or on a reasonable fee basis. In addition, the
19 commission may, but is not required to, call upon the Attorney
20 General for legal assistance and representation as provided by law;

21 ~~(14)~~ (15) Employ a Chancellor for Higher Education pursuant to
22 section five of this article;

23 ~~(15)~~ (16) Employ other staff as necessary and appropriate to
24 carry out the duties and responsibilities of the commission and the

1 council, in accordance with ~~the provisions of~~ article four of this
2 chapter;

3 ~~(16)~~ (17) Provide suitable offices in Kanawha County for the
4 chancellor, vice chancellors and other staff;

5 ~~(17)~~ (18) Advise and consent in the appointment of the
6 presidents of the institutions of higher education under its
7 jurisdiction pursuant to section six of this article. The role of
8 the commission in approving an institutional president is to assure
9 through personal interview that the person selected understands and
10 is committed to achieving the goals, ~~and~~ objectives and priorities
11 ~~as~~ set forth in the ~~institutional~~ compact, ~~and~~ in section one-a,
12 article one and article one-d of this chapter;

13 ~~(18)~~ (19) Approve the total compensation package from all
14 sources for presidents of institutions under its jurisdiction, as
15 proposed by the governing boards. The governing boards ~~must~~ shall
16 obtain approval from the commission of the total compensation
17 package both when institutional presidents are employed initially
18 and afterward when any change is made in the amount of the total
19 compensation package;

20 ~~(19)~~ (20) Establish and implement the policy of the state to
21 assure that parents and students have sufficient information at the
22 earliest possible age on which to base academic decisions about
23 what is required for students to be successful in college, other
24 post-secondary education and careers related, as far as possible,

1 to results from current assessment tools in use in West Virginia;
2 ~~(20)~~ (21) Approve and implement a uniform standard jointly
3 with the council to determine which students shall be placed in
4 remedial or developmental courses. The standard shall be aligned
5 with college admission tests and assessment tools used in West
6 Virginia and shall be applied uniformly by the governing boards
7 throughout the public higher education system. The chancellors
8 shall develop a clear, concise explanation of the standard which
9 they shall communicate to the State Board of Education and the
10 State Superintendent of Schools;

11 ~~(21) Review and approve or disapprove capital projects as~~
12 ~~described in subdivision (11) of this subsection;~~

13 (22) Jointly with the council, develop and implement an
14 oversight plan to manage systemwide technology ~~such as the~~
15 ~~following~~ by:

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

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

22 (C) Notwithstanding any other provision of law or this code to
23 the contrary, the council, commission and ~~state institutions of~~
24 ~~higher education~~ governing boards are not subject to the

1 jurisdiction of the Chief Technology Officer for any purpose;

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

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

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

22 (26) Establish and implement policies and programs, in
23 cooperation with the council and the ~~institutions of higher~~
24 ~~education~~ governing boards, through which ~~students~~ a student who

1 ~~have~~ has gained knowledge and skills through employment,
2 participation in education and training at vocational schools or
3 other education institutions, or Internet-based education programs,
4 may demonstrate by competency-based assessment that ~~they have~~ he or
5 she has the necessary knowledge and skills to be granted academic
6 credit or advanced placement standing toward the requirements of an
7 ~~associate~~ associate's degree or a bachelor's degree at a state
8 institution of higher education;

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

17 (28) ~~Develop, establish~~ Promulgate and implement a rule for
18 higher education governing boards and institutions to follow when
19 considering capital projects pursuant to article nineteen of this
20 chapter; ~~The guidelines shall assure that the governing boards and~~
21 ~~institutions do not approve or promote capital projects involving~~
22 ~~private sector businesses which would have the effect of reducing~~
23 ~~property taxes on existing properties or avoiding, in whole or in~~
24 ~~part, the full amount of taxes which would be due on newly~~

1 ~~developed or future properties;~~

2 (29) Consider and submit to the appropriate agencies of the
3 executive and legislative branches of state government ~~a budget an~~
4 appropriation request that reflects recommended appropriations ~~from~~
5 for the commission and the ~~institutions~~ governing boards under its
6 jurisdiction. The commission shall submit as part of its ~~budget~~
7 ~~proposal~~ appropriation request the separate recommended
8 ~~appropriations~~ appropriation request it received from the council,
9 both for the council and for the ~~institutions~~ governing boards
10 under the council's jurisdiction. The commission annually shall
11 submit the proposed ~~institutional~~ allocations based on each
12 institution's progress toward meeting the goals of its
13 ~~institutional~~ compact;

14 (30) The commission ~~has the authority to~~ may assess
15 institutions under its jurisdiction, including ~~the state~~
16 ~~institutions of higher education known as~~ Marshall University and
17 West Virginia University, for the payment of expenses of the
18 commission or for the funding of statewide higher education
19 services, obligations or initiatives related to the goals set forth
20 for the provision of public higher education in the state;

21 (31) Promulgate rules allocating reimbursement of
22 appropriations, if made available by the Legislature, to
23 ~~institutions of higher education~~ governing boards for qualifying
24 noncapital expenditures incurred in ~~the provision of~~ providing

1 services to students with physical, learning or severe sensory
2 disabilities;

3 (32) Make appointments to boards and commissions where this
4 code requires appointments from the state College System Board of
5 Directors or the University of West Virginia System Board of
6 Trustees which were abolished effective June 30, 2000, except in
7 those cases where the required appointment has a specific and
8 direct connection to the provision of community and technical
9 college education, the appointment shall be made by the council.
10 Notwithstanding any provisions of this code to the contrary, the
11 commission or the council may appoint one of its own members or any
12 other citizen of the state as its designee. The commission and
13 council shall appoint the total number of persons in the aggregate
14 required to be appointed by these previous governing boards;

15 (33) Pursuant to ~~the provisions of~~ article three-a, chapter
16 twenty-nine-a of this code and section six, article one of this
17 chapter, promulgate rules as necessary or expedient to fulfill the
18 purposes of this chapter. The commission and the council shall
19 promulgate a uniform joint legislative rule for the ~~purpose~~
20 purposes of standardizing, as much as possible, the administration
21 of personnel matters among the institutions of higher education and
22 implementing the provisions of articles seven, eight, nine and
23 nine-a of this chapter;

24 (34) Determine when a joint rule among the governing boards of

1 the institutions under its jurisdiction is necessary or required by
2 law and, in those instances, in consultation with the governing
3 boards of all the institutions under its jurisdiction, promulgate
4 the joint rule;

5 (35) ~~In consultation with the governing boards of Marshall~~
6 ~~University and West Virginia University, Promulgate and implement~~
7 ~~a policy rule jointly with the council whereby course credit earned~~
8 ~~at a community and technical college transfers for program credit~~
9 ~~at any other state institution of higher education and is not~~
10 ~~limited to fulfilling a general education requirement;~~

11 (36) Promulgate a joint rule with the council establishing
12 tuition and fee policy for all institutions of higher education
13 ~~other than state institutions of higher education known as Marshall~~
14 ~~University and West Virginia University which are subject to the~~
15 ~~provisions of section one, article ten of this chapter. The rule~~
16 ~~shall include, but is not limited to, the following:~~

17 (A) Comparisons with peer institutions;

18 (B) Differences among institutional missions;

19 (C) Strategies for promoting student access;

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

21 (E) Such other policies as the commission and council consider
22 appropriate;

23 (37) Implement general disease awareness initiatives to
24 educate parents and students, particularly dormitory residents,

1 about meningococcal meningitis; the potentially life-threatening
 2 dangers of contracting the infection; behaviors and activities that
 3 can increase risks; measures that can be taken to prevent contact
 4 or infection; and potential benefits of vaccination. The
 5 commission shall encourage ~~institutions~~ governing boards that
 6 provide medical care to students to provide access to the vaccine
 7 for those who wish to receive it; and

8 (38) Notwithstanding any other provision of this code to the
 9 contrary sell, lease, convey or otherwise dispose of all or part of
 10 any real property ~~which it may own~~ that it owns, ~~either by contract~~
 11 ~~or at public auction, and to retain the proceeds of any such sale~~
 12 ~~or lease: Provided, That:~~ in accordance with article nineteen of
 13 this chapter.

14 ~~(A) The commission may not sell, lease, convey or otherwise~~
 15 ~~dispose of any real property without first:~~

16 ~~(i) Providing notice to the public in the county in which the~~
 17 ~~real property is located by a Class II legal advertisement pursuant~~
 18 ~~to section two, article three, chapter fifty nine of this code;~~

19 ~~(ii) Holding a public hearing on the issue in the county in~~
 20 ~~which the real property is located; and~~

21 ~~(iii) Providing notice to the Joint Committee on Government~~
 22 ~~and Finance; and~~

23 ~~(B) Any proceeds from the sale, lease, conveyance or other~~
 24 ~~disposal of real property that is used jointly by institutions or~~

1 ~~for statewide programs under the jurisdiction of the commission or~~
2 ~~the council shall be transferred to the General Revenue Fund of the~~
3 ~~state.~~

4 (b) In addition to the powers and duties listed in subsection
5 (a) of this section, the commission has the following general
6 powers and duties related to its role in developing, articulating
7 and overseeing the implementation of the public policy agenda:

8 (1) Planning and policy leadership, including a distinct and
9 visible role in setting the state's policy agenda and in serving as
10 an agent of change;

11 (2) Policy analysis and research focused on issues affecting
12 the system as a whole or a geographical region ~~thereof~~ of the
13 system;

14 (3) Development and implementation of institutional mission
15 definitions, including use of incentive funds to influence
16 institutional behavior in ways that are consistent with public
17 priorities;

18 (4) Academic program review and approval for ~~institutions~~
19 governing boards under its jurisdiction. ~~including~~ The review and
20 approval includes use of institutional missions as a template to
21 judge the appropriateness of both new and existing programs and the
22 authority to implement needed changes. The commission's authority
23 to review and approve for either the state institution of higher
24 education known as Marshall University or West Virginia University

1 is limited to programs that are proposed to be offered at a new
2 location not presently served by that institution;

3 (5) Distribution of funds appropriated to the commission,
4 including incentive and performance-based ~~funding~~ funds;

5 (6) Administration of state and federal student aid programs
6 under the supervision of the vice chancellor for administration,
7 including promulgation of ~~any~~ rules necessary to administer those
8 programs;

9 (7) Serving as the agent to receive and disburse public funds
10 when a governmental entity requires designation of a statewide
11 higher education agency for this purpose;

12 (8) ~~Development, establishment and implementation of~~
13 Developing, establishing and implementing information, assessment,
14 ~~and accountability and personnel~~ systems, including ~~maintenance of~~
15 maintaining statewide data systems that facilitate long-term
16 planning and accurate measurement of strategic outcomes and
17 performance indicators;

18 (9) Jointly with the council, ~~developing, establishing~~
19 promulgating and implementing ~~policies~~ rules for licensing and
20 oversight for both public and private degree-granting and
21 nondegree-granting institutions that provide post-secondary
22 education courses or programs in the state; ~~pursuant to the~~
23 ~~findings and policy recommendations required by section eleven of~~
24 ~~this article;~~

1 (10) ~~Development, implementation and oversight of~~ Developing,
2 implementing and overseeing statewide and ~~region-wide~~ regional
3 projects and initiatives related to providing post-secondary
4 education at the baccalaureate level and above such as those using
5 funds from federal categorical programs or those using incentive
6 and performance-based ~~funding~~ funds from any source; and

7 (11) Quality assurance that intersects with all other duties
8 of the commission particularly in the areas of research, data
9 collection and analysis, personnel administration, planning, policy
10 analysis, program review and approval, budgeting and information
11 and accountability systems.

12 (c) In addition to the powers and duties provided in
13 subsections (a) and (b) of this section and any other powers and
14 duties ~~as may be~~ assigned to it by law, the commission has ~~such~~
15 other powers and duties ~~as may be~~ necessary or expedient to
16 accomplish the purposes of this article.

17 (d) The commission ~~is authorized to~~ may withdraw specific
18 powers of ~~any a~~ a governing board ~~of an institution~~ under its
19 jurisdiction for a period not to exceed two years, if the
20 commission ~~makes a determination~~ determines that any of the
21 following conditions exist:

22 (1) The governing board has failed for two consecutive years
23 to develop or implement an institutional compact as required in
24 article ~~one~~ one-d of this chapter;

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

5 (3) Other circumstances which, in the view of the commission,
 6 severely limit the capacity of the ~~board of Governors~~ governing
 7 board to exercise its powers or carry out its duties and
 8 responsibilities.

9 The commission may not withdraw specific powers for a period
 10 ~~of withdrawal of specific powers may not exceed~~ exceeding two
 11 years. ~~During which time the commission is authorized to the~~
 12 withdrawal period, the commission shall take all steps necessary to
 13 ~~reestablish the conditions for restoration of~~ restore sound, stable
 14 and responsible institutional governance.

15 **§18B-1B-5. Employment of Chancellor for Higher Education; office;**
 16 **powers and duties generally; employment of Vice**
 17 **Chancellors and other staff.**

18 (a) The commission, created ~~pursuant to~~ by section one of this
 19 article, shall employ a Chancellor for Higher Education who is the
 20 Chief Executive Officer of the Commission and who serves at its
 21 will and pleasure.

22 (b) The commission shall set the qualifications for the
 23 position of Chancellor and, when a vacancy occurs, shall conduct a
 24 thorough nationwide search for qualified candidates. A qualified

1 candidate is one who meets at least the following criteria:

2 (1) Possesses an excellent academic and administrative
3 background;

4 (2) Demonstrates strong communication skills;

5 (3) Has significant experience and an established national
6 reputation as a professional in the field of higher education;

7 (4) Is free of institutional or regional biases; and

8 (5) Holds or retains no other administrative position within
9 a system of higher education while employed as chancellor.

10 (c) The commission shall conduct written performance
11 evaluations of the chancellor annually and may offer the chancellor
12 a contract not to exceed three years. At the end of each contract
13 period, the commission shall review the evaluations and make a
14 determination by vote of its members on continuing employment and
15 compensation level.

16 (d) When filling a vacancy in the position of chancellor, the
17 commission shall enter into an initial employment contract for one
18 year with the candidate selected. At the end of the initial
19 contract period, and each contract period thereafter, the
20 commission shall review the evaluations and make a determination by
21 vote of its members on continuing employment and compensation level
22 for the chancellor.

23 (e) The commission sets the chancellor's salary. The salary
24 may not exceed by more than twenty percent the average annual

1 salary of chief executive officers of state systems of higher
2 education in the states that comprise the membership of the
3 Southern Regional Education Board.

4 (f) The commission may employ a Vice Chancellor for Health
5 Sciences who serves at the will and pleasure of the commission.
6 The Vice Chancellor for Health Sciences shall coordinate the West
7 Virginia University School of Medicine, the Marshall University
8 School of Medicine and the West Virginia School of Osteopathic
9 Medicine and also shall provide assistance to the governing boards
10 on matters related to medical education and health sciences. The
11 Vice Chancellor for Health Sciences shall perform all duties
12 assigned by the chancellor, the commission and state law. In the
13 case of a vacancy in the office of Vice Chancellor of Health
14 Sciences, the duties assigned to this office by law are the
15 responsibility of the chancellor or a designee.

16 (g) The commission shall employ a Vice Chancellor for
17 Administration pursuant to section two, article four of this
18 chapter.

19 (h) The commission shall employ a Vice Chancellor for Human
20 Resources pursuant to section two-a, article four of this chapter.
21 Additionally, the commission shall employ a Director of
22 Classification, Compensation and Human Resources Information
23 Systems, if practicable, by October 1, 2011. The director shall
24 report to the Vice Chancellor for Human Resources and perform

1 duties as assigned by the Vice Chancellor, the chancellors, the
2 commission, the council or by law.

3 ~~(h)~~ (i) The commission may employ a Vice Chancellor for State
4 Colleges who serves at the will and pleasure of the commission. ~~It~~
5 ~~is the duty and responsibility of~~ At a minimum, the Vice Chancellor
6 for State Colleges ~~to~~ shall perform the following duties:

7 (1) Provide assistance to the commission, the chancellor and
8 the state colleges on matters related to or of interest and concern
9 to these institutions;

10 (2) Advise, assist and consult regularly with the ~~institutional~~
11 presidents and ~~institutional boards of Governors~~ governing boards
12 of each state college;

13 (3) Serve as an advocate and spokesperson for the state
14 colleges to represent them and to make their interests, views and
15 issues known to the chancellor, the commission and governmental
16 agencies;

17 (4) Perform all duties assigned by the chancellor, the
18 commission and state law.

19 In addition, the Vice Chancellor for State Colleges ~~has the~~
20 ~~responsibility and the duty to~~ shall provide staff assistance to the
21 ~~institutional~~ presidents and governing boards to the extent
22 practicable.

23 ~~(i)~~ (j) On behalf of the commission, the chancellor may enter
24 into agreements with any state agency or political subdivision of

1 the state, any state ~~higher education~~ institution of higher
2 education or any other person or entity to enlist staff assistance
3 to implement the powers and duties assigned by the commission or by
4 state law.

5 ~~(j)~~ (k) The chancellor is responsible for the daily operations
6 of the commission and has the following responsibilities relating
7 to the commission and the ~~institutions~~ governing boards under its
8 jurisdiction:

9 (1) To carry out policy and program directives of the
10 commission;

11 (2) To develop and submit annual reports on the implementation
12 plan to achieve the goals and objectives set forth in section one-a,
13 article one and article one-d of this chapter, and in the
14 ~~institutional~~ compacts;

15 (3) To prepare and submit to the commission for its approval
16 the proposed budget of the commission including the offices of the
17 chancellor and the vice chancellors;

18 (4) To assist the governing boards in developing rules, subject
19 to the provisions of section six, article one of this chapter.

20 Nothing in this chapter requires the rules of the governing boards
21 to be filed pursuant to the rule-making procedures provided in
22 article three-a, chapter twenty-nine-a of this code. The commission
23 and the council, either separately or jointly as appropriate, are
24 responsible for ensuring that any policy which is required to be

1 uniform across the institutions is applied in a uniform manner;

2 (5) To perform all other duties and responsibilities assigned
3 by the commission or by state law.

4 ~~(k)~~ (l) The chancellor shall be reimbursed for all actual and
5 necessary expenses incurred in the performance of all assigned
6 duties and responsibilities.

7 ~~(l)~~ (m) The chancellor, with the commission, advises the
8 Legislature on matters of higher education in West Virginia. The
9 chancellor shall work closely with the Legislative Oversight
10 Commission on Education Accountability and with the elected
11 leadership of the state to ensure that they are fully informed about
12 higher education issues and that the commission fully understands
13 the goals, objectives and priorities for higher education that the
14 Legislature has established by law.

15 ~~(m)~~ (n) The chancellor may design and develop for consideration
16 by the commission new statewide or ~~regional~~ region-wide initiatives
17 in accordance with the goals set forth in section one-a, article one
18 and article one-d of this chapter, and the public policy agenda
19 articulated by the commission. In those instances where the
20 initiatives to be proposed have a direct and specific impact or
21 connection to community and technical college education as well as
22 to baccalaureate and graduate education, the Chancellor for Higher
23 Education and the Chancellor for Community and Technical College
24 Education shall design and develop the initiatives jointly for

1 consideration by the commission and the council.

2 ~~(n)~~ (o) To further the goals of cooperation and coordination
 3 between the commission and the State Board of Education, the
 4 chancellor serves as an ex officio, nonvoting member of the state
 5 board. The chancellor shall work closely with members of the State
 6 Board of Education and with the State Superintendent of Schools to
 7 assure that the following goals are met:

8 (1) Development and implementation of a seamless kindergarten-
 9 through-college system of education; and

10 (2) Appropriate coordination of missions and programs.

11 ~~To further the goals of cooperation and coordination between~~
 12 ~~the Commission and the State Board of Education, the chancellor~~
 13 ~~serves as an ex officio, nonvoting member of the State Board of~~
 14 ~~Education.~~

15 **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

16 **§18B-2A-3. Supervision of governing boards; promulgation of rules.**

17 (a) The governing boards are subject to the supervision of the
 18 commission or the council, as appropriate, except for in those
 19 instances where specific statutory exceptions are granted by law to
 20 the governing boards of Marshall University and West Virginia
 21 University. ~~as it relates to the state institutions of higher~~
 22 ~~education known as Marshall University and West Virginia University~~

23 (b) The governing boards of all state institutions of higher
 24 education are subject to the provisions of law that relate to the

1 administration of personnel matters including, specifically,
2 articles seven, eight, nine and nine-a of this chapter and to rules
3 promulgated and adopted in accordance with these provisions.

4 (c) The Chancellor for Higher Education and the Chancellor for
5 Community and Technical College Education, under the supervision of
6 their respective boards, are responsible for the coordination of
7 policies, ~~and~~ purposes and rules of the governing boards and shall
8 provide for and facilitate sufficient interaction among the
9 governing boards and between the governing boards and the State
10 Board of Education to meet the goals and objectives provided in the
11 compacts and in section one-a, article one and article one-d of this
12 chapter.

13 ~~(b)~~ (d) The governing boards and the State Board of Education
14 shall provide ~~any and~~ all information requested by the commission
15 ~~or~~ and the council, whether the request is made separately or
16 jointly, in an appropriate format and in a timely manner.

17 **§18B-2A-4. Powers and duties of governing boards generally.**

18 Each governing board separately has the following powers and
19 duties:

20 (a) Determine, control, supervise and manage the financial,
21 business and education policies and affairs of the state institution
22 of higher education under its jurisdiction;

23 (b) Develop a master plan for the institution under its
24 jurisdiction.

1 (1) The ultimate responsibility for developing and updating ~~the~~
2 each master ~~plans~~ plan at the ~~institutional~~ institution level
3 resides with the ~~board of Governors~~ governing board, but the
4 ultimate responsibility for approving the final version of ~~the~~
5 ~~institutional~~ each master ~~plans~~ plan, including periodic updates,
6 resides with the commission or council, as appropriate.

7 (2) Each master plan shall include, but is not ~~be~~ limited to,
8 the following:

9 (A) A detailed demonstration of how the master plan will be
10 used to meet the goals, ~~and~~ objectives and priorities of the
11 ~~institutional~~ compact;

12 (B) A well-developed set of goals, objectives and priorities
13 outlining missions, degree offerings, resource requirements,
14 physical plant needs, personnel needs, enrollment levels and other
15 planning determinates and projections necessary in a plan to assure
16 that the needs of the institution's area of responsibility for a
17 quality system of higher education are addressed;

18 (C) ~~Document~~ Documentation ~~the involvement of~~ showing how the
19 governing board involved the commission or council, as appropriate,
20 ~~institutional~~ constituency groups, clientele of the institution and
21 the general public in the development of all segments of the
22 ~~institutional~~ master plan.

23 (3) The plan shall be established for periods of not ~~less~~ fewer
24 than three nor more than five years and shall be revised

1 periodically as necessary, including ~~the addition or deletion of~~
2 adding or deleting degree programs as the governing board in ~~the~~ its
3 discretion ~~of the appropriate governing board,~~ are determines is
4 necessary;

5 (c) Develop a ten-year campus development plan in accordance
6 with article nineteen of this chapter.

7 ~~(c)~~ (d) Prescribe for the institution under its jurisdiction,
8 in accordance with its master plan and compact, specific functions
9 and responsibilities to achieve the goals, objectives and priorities
10 established in articles one and one-d of this chapter to meet the
11 higher education needs of its area of responsibility and to avoid
12 unnecessary duplication;

13 ~~(d)~~ (e) Direct the preparation of ~~a budget~~ an appropriation
14 request for the institution under its jurisdiction, which relates
15 directly to missions, goals and projections ~~as~~ found in the
16 ~~institutional~~ master plan and the ~~institutional~~ compact;

17 ~~(e)~~ (f) Consider, revise and submit to the commission or
18 council, as appropriate, ~~a budget~~ an appropriation request on behalf
19 of the institution under its jurisdiction;

20 ~~(f)~~ (g) Review, at least every five years, all academic
21 programs offered at the institution under its jurisdiction. The
22 review shall address the viability, adequacy and necessity of the
23 programs in relation to established state goals, objectives and
24 priorities, the ~~institutional~~ master plan, the ~~institutional~~ compact

1 and the education and workforce needs of its responsibility
2 district. As a part of the review, each governing board shall
3 require the institution under its jurisdiction to conduct periodic
4 studies of its graduates and their employers to determine placement
5 patterns and the effectiveness of the education experience. Where
6 appropriate, these studies should coincide with the studies required
7 of many academic disciplines by their accrediting bodies;

8 ~~(g)~~ (h) Ensure that the sequence and availability of academic
9 programs and courses offered by the institution under its
10 jurisdiction is such that students have the maximum opportunity to
11 complete programs in the time frame normally associated with program
12 completion. Each governing board is responsible to see that the
13 needs of nontraditional college-age students are appropriately
14 addressed and, to the extent it is possible for the individual
15 governing board to control, to assure core course work completed at
16 the institution under its jurisdiction is transferable to any other
17 state institution of higher education for credit with the grade
18 earned;

19 ~~(h)~~ (i) Subject to ~~the provisions of~~ article one-b of this
20 chapter, approve the teacher education programs offered ~~in~~ at the
21 institution under its control. In order to permit graduates of
22 teacher education programs to receive a degree from a nationally
23 accredited program and in order to prevent expensive duplication of
24 program accreditation, the commission may select and use one

1 nationally recognized teacher education program accreditation
2 standard as the appropriate standard for program evaluation;

3 ~~(i)~~ (j) ~~Use~~ Involve faculty, students and classified employees
4 in ~~institutional~~ institution-level planning and decision-making when
5 those groups are affected;

6 ~~(j)~~ (k) Subject to ~~the provisions of~~ federal law and pursuant
7 to ~~the provisions of article~~ articles seven, eight, nine and nine-a
8 of this chapter and to rules adopted by the commission and the
9 council, administer a system for the management of personnel
10 matters, including, but not limited to, ~~personnel classification,~~
11 ~~compensation and~~ discipline for employees at the institution under
12 its jurisdiction;

13 ~~(k)~~ (l) Administer a system for hearing employee grievances and
14 appeals. Notwithstanding any other provision of this code to the
15 contrary, the procedure established in article two, chapter six-c
16 of this code is the exclusive mechanism for hearing prospective
17 employee grievances and appeals;

18 ~~(l)~~ (m) Solicit and use or expend voluntary support, including
19 financial contributions and support services, for the institution
20 under its jurisdiction;

21 ~~(m)~~ (n) Appoint a president for the institution under its
22 jurisdiction subject to ~~the provisions of~~ section six, article one-b
23 of this chapter;

24 ~~(n)~~ (o) Conduct written performance evaluations of the

1 president pursuant to section six, article one-b of this chapter;

2 ~~(o)~~ (p) Employ all faculty and staff at the institution under
3 its jurisdiction. The employees operate under the supervision of
4 the president, but are employees of the governing board;

5 ~~(p)~~ (q) Submit to the commission or council, as appropriate,
6 ~~no later than the first day of November of each year an annual~~
7 ~~report of the performance of the institution under its jurisdiction~~
8 ~~during the previous fiscal year as compared to established state~~
9 ~~goals, objectives, and priorities, and goals stated in its master~~
10 ~~plan and institutional compact~~ any data or reports requested by the
11 commission or council, as appropriate, within the time frame set by
12 the commission or council;

13 ~~(q)~~ (r) Enter into contracts or consortium agreements with the
14 public schools, private schools or private industry to provide
15 technical, vocational, college preparatory, remedial and customized
16 training courses at locations either on campuses of the public
17 institution of higher education or at off-campus locations in the
18 institution's responsibility district. To accomplish this goal, the
19 governing boards may share resources among the various groups in the
20 community;

21 ~~(r)~~ (s) Provide and transfer ~~funding~~ funds and property to
22 certain corporations pursuant to section ten, article twelve of this
23 chapter;

24 ~~(s)~~ (t) Delegate, with prescribed standards and limitations,

1 the part of its power and control over the business affairs of the
2 institution to the president in any case where it considers the
3 delegation necessary and prudent in order to enable the institution
4 to function in a proper and expeditious manner and to meet the
5 requirements of its master plan and ~~institutional~~ compact. If a
6 governing board elects to delegate any of its power and control
7 under ~~the provisions of~~ this subsection, it shall enter the
8 delegation in the minutes of the meeting when the decision was made
9 and shall notify the commission or council, as appropriate. Any
10 delegation of power and control may be rescinded by the appropriate
11 governing board, the commission or council, as appropriate, at any
12 time, in whole or in part; except that the commission may not revoke
13 delegations of authority made by the governing boards of Marshall
14 University or West Virginia University. ~~as they relate to the state
15 institutions of higher education known as Marshall University and
16 West Virginia University;~~

17 ~~(t)~~ (u) Unless changed by the commission or the council, as
18 appropriate, continue to abide by existing rules setting forth
19 standards for ~~acceptance of~~ accepting advanced placement credit for
20 the institution under its jurisdiction. Individual departments at
21 a state institution of higher education, with ~~may, upon~~ approval of
22 the ~~institutional~~ faculty senate, may require higher scores on the
23 advanced placement test than scores designated by the governing
24 board when the credit is to be used toward meeting a requirement of

1 the core curriculum for a major in that department;

2 ~~(u)~~ (v) Consult, cooperate and ~~work~~ coordinate with the State
3 Treasurer and the State Auditor to update as necessary and maintain
4 an efficient and cost-effective system for the financial management
5 and expenditure of ~~special~~ appropriated and nonappropriated revenue
6 ~~and appropriated state funds~~ at the institution under its
7 jurisdiction. ~~that ensures~~ The system shall ensure that properly
8 submitted requests for payment ~~be~~ are paid on or before the due date
9 but, in any event, within fifteen days of receipt in the State
10 Auditor's Office;

11 ~~(v)~~ (w) In consultation with the appropriate chancellor and the
12 Secretary of the Department of Administration, develop, update as
13 necessary and maintain a plan to administer a consistent method of
14 conducting personnel transactions, including, but not limited to,
15 hiring, dismissal, promotions, changes in salary or compensation and
16 transfers at the institution under its jurisdiction. Each personnel
17 transaction shall be accompanied by the appropriate standardized
18 system or forms, as appropriate, which shall be submitted to the
19 respective governing board and the Department of Finance and
20 Administration:

21 (1) Not later than July 1, 2012, the Department of
22 Administration shall make available to each governing board the
23 option of using a standardized electronic system for these personnel
24 transactions.

1 (2) The Secretary of the Department of Administration may
2 suspend a governing board's participation in the standardized
3 electronic system if he or she certifies to the Governor that the
4 governing board has failed repeatedly and substantially to comply
5 with the department's policies for administering the electronic
6 system;

7 ~~(w)~~ (x) Notwithstanding any other provision of this code to the
8 contrary, transfer funds from any account specifically appropriated
9 for its use to any corresponding line item in a general revenue
10 account at any agency or institution under its jurisdiction as long
11 as ~~such~~ the transferred funds are used for the purposes
12 appropriated;

13 ~~(x)~~ (y) Transfer funds from appropriated special revenue
14 accounts for capital improvements under its jurisdiction to special
15 revenue accounts at agencies or institutions under its jurisdiction
16 as long as ~~such~~ the transferred funds are used for the purposes
17 appropriated in accordance with article nineteen of this chapter;

18 ~~(y)~~ (z) Notwithstanding any other provision of this code to the
19 contrary, acquire legal services that are necessary, including
20 representation of the governing board, its institution, employees
21 and officers before any court or administrative body. The counsel
22 may be employed either on a salaried basis or on a reasonable fee
23 basis. In addition, the governing board may, but is not required
24 to, call upon the Attorney General for legal assistance and

1 representation as provided by law; and

2 ~~(z)~~ (aa) Contract and pay for disability insurance for a class
3 or classes of employees at a state institution of higher education
4 under its jurisdiction.

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

7 **§18B-2B-3. West Virginia council for community and technical**
8 **college education; supervision of chancellor; chief**
9 **executive officer.**

10 (a) There is continued the West Virginia council for community
11 and technical college education. The council has all the powers and
12 duties assigned by law to the joint commission for vocational-
13 technical-occupational education prior to ~~the effective date of this~~
14 ~~section~~ July 1, 2011, and ~~such all~~ other powers and duties ~~as may~~
15 ~~be~~ assigned by law.

16 (b) The council shall employ a chancellor for community and
17 technical college education. The chancellor serves as chief
18 executive officer of the council at the will and pleasure of the
19 council. The chancellor shall be compensated at a level set by the
20 council not to exceed eighty percent of the ~~annual salary of the~~
21 ~~chancellor for higher education~~ average annual salary of chief
22 executive officers of the state systems of community and technical
23 colleges in the states that comprise the membership of the Southern

1 Regional Education Board.

2 ~~(1) The vice chancellor for community and technical college~~
3 ~~education and workforce development, as the current chief executive~~
4 ~~officer of the council, shall continue in such capacity upon the~~
5 ~~effective date of this section, and shall be the chancellor for~~
6 ~~community and technical college education.~~

7 ~~(A) The council shall conduct a written performance evaluation~~
8 ~~of the chancellor one year after the effective date of this section.~~
9 ~~The council shall report the results of the evaluation to the~~
10 ~~Legislative Oversight commission on education accountability during~~
11 ~~the legislative interim meeting period following the evaluation.~~

12 ~~(B) After reviewing the evaluation, the council shall make a~~
13 ~~determination by vote of its members on continuing employment and~~
14 ~~compensation level for the chancellor.~~

15 ~~(C) After the initial contract period,~~ (c) The council shall
16 conduct written performance evaluations of the chancellor annually
17 and may offer the chancellor a contract ~~of longer term, but~~ not to
18 exceed three years. At the end of each contract period, the council
19 shall review the evaluations and make a determination by vote of its
20 members on continuing employment and level of compensation.

21 ~~(D)~~ (d) When a vacancy occurs in the position of chancellor,
22 the council shall enter into an initial employment contract for one
23 year with the candidate selected to fill the vacancy. At the end
24 of the initial period, and each contract period thereafter, the

1 council shall ~~make a determination by vote of its members on~~
2 ~~continuing employment and compensation level for the chancellor and~~
3 ~~shall continue thereafter as set forth in paragraph (C) of this~~
4 ~~subdivision~~ review the evaluations and make a determination by vote
5 of its members on continuing employment and compensation level for
6 the chancellor.

7 ~~(2)~~ (e) The individual who was serving as Vice Chancellor for
8 Community and Technical College Education and Workforce Development
9 and who became chancellor effective March 13, 2004, maintains all
10 benefits of employment held, accrued and afforded as the Vice
11 Chancellor for Community and Technical College Education and
12 Workforce Development prior to March 13, 2004, ~~Such~~ These benefits
13 include, but are not limited to, retirement benefits, continued
14 membership in the same retirement system, ~~any~~ insurance coverage and
15 sick and annual leave. For the purposes of leave conversion
16 established in section thirteen, article sixteen, chapter five of
17 this code, the chancellor is not a new employee and the prohibition
18 on conversion does not apply if the chancellor was eligible for
19 leave conversion while serving as vice chancellor. ~~on the day~~
20 ~~preceding the effective date of this section. On the effective date~~
21 ~~of this section for the purpose of section thirteen, article~~
22 ~~sixteen, chapter five of this code, the chancellor:~~

23 ~~(A) Maintains all sick and annual leave accrued, and all rights~~
24 ~~to convert the leave that had been accrued as vice chancellor; and~~

1 ~~(B) Continues to maintain his or her status for eligibility~~
2 ~~under the provisions and application of said section as applied~~
3 ~~while serving as vice chancellor on the day preceding the effective~~
4 ~~date of this section.~~

5 **§18B-3-3. Relationship of governing boards to the commission and**
6 **the council.**

7 (a) *Relationship between the commission and the governing*
8 *boards. --*

9 (1) The commission functions as a state-level coordinating
10 board exercising its powers and duties in relation to the governing
11 boards ~~of Marshall University and West Virginia University only as~~
12 ~~specifically~~ prescribed by law;

13 (2) The primary responsibility of the commission is to work
14 collaboratively with the governing boards to research, develop and
15 propose policy that will achieve the established goals, ~~and~~
16 objectives, and priorities set forth in this chapter and chapter
17 eighteen-c of this code; and

18 (3) The commission has specific ~~responsibilities~~ powers and
19 duties which include, but are not limited to, the following:

20 (A) Advocating for public higher education at the state level;
21 ~~and~~

22 (B) Jointly with the council, implementing the classification
23 and compensation system established by articles seven, eight, nine
24 and nine-a of this chapter; and

1 ~~(B)~~ (C) Collecting and analyzing data, researching, developing
2 recommendations, and advising the Legislature and the Governor on
3 broad policy initiatives, use of incentive funding, national and
4 regional trends in higher education and issues of resource
5 allocation involving multiple governing boards.

6 (b) *Relationship between the council and the governing boards.*

7 --

8 (1) The council maintains all powers and duties assigned to it
9 by law or policy rule relating to ~~the institution known as Marshall~~
10 Mountwest Community and Technical College, ~~the institution known as~~
11 ~~The~~ Bridgemont Community and Technical College at ~~West Virginia~~
12 ~~University Institute of Technology~~ and ~~the institution known as West~~
13 ~~Virginia University at Parkersburg;~~

14 (2) The council functions as a coordinating board for the
15 institutions under its jurisdiction which make up the statewide
16 network of independently-accredited community and technical
17 colleges. In addition to recognizing the authority assigned by law
18 to the council and abiding by rules duly promulgated by the council
19 relating to the community and technical colleges, ~~it is the~~
20 ~~responsibility of~~ the governing boards ~~of Marshall University and~~
21 ~~West Virginia University to~~ shall exercise their authority and carry
22 out their responsibilities in a manner that is consistent with and
23 complementary to the powers and duties assigned by law or policy
24 rule to the community and technical colleges or to the council;

1 (c) The governing boards shall work collaboratively with the
2 commission, the council and their staff to provide ~~any~~ and all
3 information requested by the commission or the council in an
4 appropriate format and in a timely manner.

5 **ARTICLE 4. GENERAL ADMINISTRATION.**

6 **§18B-4-1. Employment of chancellors; designation of staff;**
7 **offices.**

8 (a) The council and commission each shall employ a chancellor
9 to assist in the performance of their respective duties and
10 responsibilities subject to the following conditions:

11 (1) Each chancellor serves at the will and pleasure of the
12 hiring body.

13 (2) Neither chancellor may hold ~~or~~ nor retain any other
14 administrative position within the system of higher education while
15 employed as chancellor.

16 (3) Each chancellor ~~is responsible for carrying~~ shall carry out
17 the directives of the body by whom employed and shall work with that
18 body in developing policy options.

19 (4) The commission is responsible to the council and the
20 Chancellor for Community and Technical College Education for
21 providing services in areas essential to exercising the powers and
22 duties assigned to the council by law. The commission may not
23 charge the council any fee for the provision of these essential
24 services. The service areas include, but are not limited to, legal

1 services, research, technology, computing, finance and facilities,
2 academic affairs, telecommunications, human resources, student
3 services and any other general areas the council considers to be
4 essential to the exercise of its legal authority. The services are
5 provided under the general supervision of the Vice Chancellor for
6 Administration.

7 (5) For the purpose of developing or evaluating policy options,
8 the chancellors may request the assistance of the presidents and
9 staff ~~of the institutions~~ employed by the governing boards under
10 their respective jurisdictions.

11 (b) In addition to the staff positions designated in
12 subdivision (4), subsection (a) of this section, and section five,
13 article one-b of this chapter, the Vice Chancellor for
14 Administration, employed pursuant to section two of this article,
15 serves the offices of the chancellors to discharge jointly the
16 duties and responsibilities of the council and commission.

17 (c) The Vice Chancellor for Health Sciences shall coordinate
18 the West Virginia University School of Medicine, the Marshall
19 University School of Medicine and the West Virginia School of
20 Osteopathic Medicine.

21 (d) Suitable offices for the vice chancellor of administration
22 and other staff shall be provided in Kanawha County.

23 **§18B-4-2a. Employment of vice chancellor for human resources;**
24 **powers and duties generally; staff; office.**

1 (a) By and with the advice and consent of the council for
2 community and technical college education, the commission shall
3 employ a Vice Chancellor for Human Resources who may not be
4 dismissed without the consent of the council. Any vacancy occurring
5 in this position shall be filled in accordance with this section.

6 (b) The successful candidate for the position of vice
7 chancellor shall possess the following minimum qualifications:

8 (1) A master's degree in human resources or a related field;
9 and

10 (2) Thorough knowledge of and experience administering
11 employment laws and regulations, recruiting and selection
12 techniques, employee relations techniques and methodologies, legal
13 reporting and compliance requirements.

14 (c) The Vice Chancellor in consultation with the chancellors,
15 performs functions, tasks and responsibilities necessary to carry
16 out the policy directives of the council and commission and any
17 other duties prescribed by law. The Vice Chancellor oversees and
18 monitors all issues related to the personnel system for higher
19 education employees and provides technical support to organizations
20 as directed or requested on all issues related to the design,
21 development, implementation and administration of the personnel
22 system established by this chapter and by duly promulgated rules.

23 (d) The Vice Chancellor supervises the Director of
24 Classification, Compensation and Human Resources Information

1 Systems, as well as professional, administrative, clerical and other
2 employees necessary to carry out assigned powers and duties. In
3 consultation with the Vice Chancellor for Administration and the
4 chancellors, the Vice Chancellor shall delineate staff
5 responsibilities as considered desirable and appropriate.

6 (e) The Vice Chancellor provides support to the chancellors and
7 organizations on a highly diverse range of issues including
8 assisting them to develop a culture of constant improvement in a
9 rapidly changing, complex market. Duties of the position include,
10 but are not limited to, the following:

11 (1) Developing and implementing business-related initiatives
12 involving organizational design, labor cost management, executive
13 recruitment and compensation, leadership and management development,
14 human resources data and technology, and compensation and benefits
15 programs;

16 (2) Chairing the Job Classification Committee and the
17 Compensation Planning and Review Committee established by sections
18 four and five, article nine-a of this chapter.

19 (3) Supervising the work of the Director of Classification,
20 Compensation and Human Resources Information Systems who has the
21 following duties:

22 (A) Assuming responsibility for coordinating compensation and
23 benefits programs for all employees, including designing these
24 programs, and for supporting each higher education organization in

1 implementing the programs;

2 (B) Maintaining consistent human resources information systems
3 and selecting and supervising benefits consultants, brokers,
4 trustees and necessary legal assistants;

5 (C) Maintaining the classification system by providing for
6 regular review of jobs to determine whether the current job
7 description accurately reflects the duties and responsibilities and
8 whether the job is properly classified or needs to be modified or
9 deleted. Every job shall be reviewed at least once within each
10 five-year period; and

11 (D) Ensuring that market comparison studies are conducted for
12 each class of employees and providing a report annually to each
13 organization on the status of relative market equity among the
14 employee classifications.

15 (4) Carrying out the following duties related to training and
16 development:

17 (A) Analyzing and determining training needs of organization
18 employees and formulating and developing plans, procedures and
19 programs to meet specific training needs and problems. Successful
20 completion of these tasks requires the director to work closely with
21 and communicate regularly with the training and development
22 coordinators employed by each organization;

23 (B) Developing, constructing, maintaining and revising training
24 manuals and training aids or supervising development of these

1 materials by outside suppliers;

2 (C) Planning, conducting, and coordinating management
3 inventories, appraisals, placement, counseling and training;

4 (D) Coordinating participation by all employees in training
5 programs developed internally or provided by outside contractors;
6 and

7 (E) Administering and analyzing an annual training and
8 development needs survey. The survey may coincide with the
9 completion of the annual performance review process.

10 (5) Conducting performance reviews of personnel who administer
11 human resources functions at each organization in relation to best
12 practices pursuant to articles seven, eight, nine and nine-a of this
13 chapter and rules of the commission and council. Human resources
14 personnel at each organization shall be evaluated at least once
15 within each three-year period. The Vice Chancellor shall analyze
16 the results of these evaluations and target training and
17 professional development to identified areas of deficiency.

18 **ARTICLE 7. PERSONNEL GENERALLY.**

19 **§18B-7-1. Legislative intent and purpose.**

20 (a) The intent of the Legislature in enacting this article and
21 articles eight, nine and nine-a of this chapter is to establish a
22 state-wide, integrated human resources structure capable of, but not
23 limited to, meeting the following objectives:

24 (1) Providing benefits to the citizens of the State of West

1 Virginia by supporting the public policy agenda as articulated by
2 state policy makers;

3 (2) Assuring fiscal responsibility by making the best use of
4 scarce resources;

5 (3) Promoting fairness, accountability, credibility,
6 transparency and a systematic approach to progress (FACTS) in
7 personnel decision-making;

8 (4) Reducing, or, wherever possible, eliminating arbitrary and
9 capricious decisions affecting employees of higher education
10 organizations as defined in section two, article nine-a of this
11 chapter;

12 (5) Creating a stable, self-regulating human resources system
13 capable of evolving to meet changing needs;

14 (6) Providing for institutional flexibility with meaningful
15 accountability;

16 (7) Adhering to federal and state laws;

17 (8) Adhering to duly promulgated and adopted rules; and

18 (9) Implementing best practices throughout the state higher
19 education system.

20 (b) To accomplish these goals, the Legislature encourages
21 organizations to pursue a human resources strategy which provides
22 monetary and nonmonetary returns to employees in exchange for their
23 providing their time, talents and efforts to meet articulated goals,
24 objectives and priorities of the state, the commission and council,

1 and the organization. The system should maximize the recruitment,
2 motivation and retention of highly qualified employees, ensure
3 satisfaction and engagement of employees with their jobs, ensure job
4 performance and achieve desired results.

5 **§18B-7-2. Definitions.**

6 For the purposes of this article and articles eight, nine and
7 nine-a of this chapter, the following words have the meanings
8 ascribed to them unless the context clearly indicates a different
9 meaning:

10 (a) "Benefits" means programs that an employer uses to
11 supplement the cash compensation of employees and includes health
12 and welfare plans, retirement plans, pay for time not worked and
13 other employee perquisites.

14 (b) "Compensation" means cash provided by an employer to an
15 employee for services rendered.

16 (c) "Compensatory time" and "compensatory time off" mean hours
17 during which the employee is not working, which are not counted as
18 hours worked during the applicable work week or other work period
19 for purposes of overtime compensation and for which the employee is
20 compensated at the employee's regular rate of pay.

21 (d) "Employee classification" or "employee class" means those
22 employees designated as classified employees; nonclassified
23 employees, including presidents, chief executives and top level
24 administrators and faculty as these terms are defined in this

1 article and articles eight, nine and nine-a of this chapter.

2 (e) "Health and welfare benefit plan" means an arrangement
3 which provides any of the following: Medical, dental, visual,
4 psychiatric or long-term health care, life insurance, accidental
5 death or dismemberment benefits, disability benefits or comparable
6 benefits.

7 (f) "Relative market equity" means the relative market status
8 of each employee classification at an organization falls within five
9 percent of all other employee classifications within the
10 organization for the preceding three-year period.

11 (g) "Relative market status" means the calculated relationship
12 between the average salary of each employee classification and its
13 peer group.

14 **§18B-7-3. Seniority for full-time classified personnel; seniority**
15 **to be observed in reducing workforce; preferred**
16 **recall list; renewal of listing; notice of vacancies.**

17 (a) Definitions for terms used in this section have the
18 meanings ascribed to them in section two, article one of this
19 chapter and section two, article nine of this chapter, except that,
20 unless clearly noted otherwise, this section applies only to an
21 employee:

22 (1) Who is classified and whose employment, if continued,
23 accumulates to a minimum total of one thousand forty hours during
24 a calendar year and extends over at least nine months of a calendar

1 year; or

2 (2) Who is transferred involuntarily to a position in
3 nonclassified status for which he or she did not apply. Any
4 classified employee involuntarily transferred to a position in
5 nonclassified status may only exercise the rights set out in this
6 section for positions equivalent to or lower than the last job class
7 the employee held.

8 (b) All decisions by an organization or its agents concerning
9 reductions in workforce of full-time classified employees, whether
10 by temporary furlough or permanent termination, shall be made in
11 accordance with this section.

12 (1) For layoffs by classification for reason of lack of funds
13 or work, or abolition of position or material changes in duties or
14 organization and for recall of employees laid off, consideration
15 shall be given to an employee's seniority as measured by permanent
16 employment in the service of the state system of higher education.

17 (2) If the organization desires to lay off a more senior
18 employee, it shall demonstrate that the senior employee cannot
19 perform any other job duties held by less senior employees of that
20 organization in the same job class or any other equivalent or lower
21 job class for which the senior employee is qualified. If an employee
22 refuses to accept a position in a lower job class, the employee
23 retains all rights of recall provided in this section.

24 (3) If two or more employees accumulate identical seniority,

1 the priority is determined by a random selection system established
2 by the employees and approved by the organization.

3 (c) Each employee laid off during a furlough or reduction in
4 workforce is placed upon a preferred recall list and is recalled to
5 employment by the organization on the basis of seniority.

6 (1) An employee's listing with an organization remains active
7 for a period of one calendar year from the date of termination or
8 furlough or from the date of the most recent renewal. If an employee
9 fails to renew the listing with the organization, the employee's
10 name may be removed from the list.

11 (2) An employee placed upon the preferred recall list shall be
12 recalled to any position opening by the organization within the
13 classifications in which the employee had previously been employed
14 or to any lateral position for which the employee is qualified.

15 (3) An employee on the preferred recall list does not forfeit
16 the right to recall by the organization if compelling reasons
17 require the employee to refuse an offer of reemployment by the
18 organization.

19 (d) The organization shall notify all employees maintaining
20 active listings on the preferred recall list of all position
21 openings that periodically exist.

22 (1) The notice shall be sent by certified mail to the last
23 known address of the employee. It is the duty of each employee
24 listed to notify the organization of any change in address and to

1 keep the listing with the organization current.

2 (2) A position opening may not be filled by the organization,
3 whether temporary or permanent, until all employees on the preferred
4 recall list have been properly notified of existing vacancies and
5 have been given an opportunity to accept reemployment.

6 (e) A nonexempt classified employee is one to whom the
7 provisions of the federal Fair Labor Standards Act, as amended,
8 apply. A nonexempt classified employee, who applies and meets the
9 minimum qualifications for a nonexempt job opening at the
10 organization where currently employed, whether the job is a lateral
11 transfer or a promotion, shall be transferred or promoted before a
12 new person is hired.

13 (1) This subsection does not apply if the hiring is affected
14 by mandates in affirmative action plans or the requirements of
15 Public Law 101-336, the Americans with Disabilities Act.

16 (2) This subsection applies to any nonexempt classified
17 employee, including one who has not accumulated a minimum total of
18 one thousand forty hours during the calendar year and one whose
19 contract does not extend over at least nine months of a calendar
20 year.

21 (3) If more than one qualified, nonexempt classified employee
22 applies, the best-qualified nonexempt classified employee is awarded
23 the position. In instances where the classified employees are
24 equally qualified, the nonexempt classified employee with the

1 greatest amount of continuous seniority at that organization is
2 awarded the position.

3 (f) In addition to any other information required, applications
4 for employment by a personnel governed by this section shall include
5 each applicant's social security number.

6 (g) Regardless of the level of seniority for an employee, for
7 the purposes of this section in the case of a reduction in force:

8 (1) An employee at an organization under the jurisdiction of
9 the council may not displace an employee of an organization under
10 the jurisdiction of the commission.

11 (2) An employee at an organization under the jurisdiction of
12 the commission may not displace an employee of an organization under
13 the jurisdiction of the council.

14 (3) An employee performing a dual service for a formerly
15 administratively linked community and technical college and a former
16 sponsoring institution under the jurisdiction of the commission is
17 an employee of the institution under the jurisdiction of the
18 commission if that institution receives a fee from the community and
19 technical college for the service performed by the employee.

20 **§18B-7-4. Supplemental health and welfare benefit plans.**

21 (a) An organization may contract for supplemental health and
22 welfare benefit plans for any or all of its employees in addition
23 to the benefits the employees otherwise receive.

24 (b) An organization may make additional periodic deductions

1 from the salary payments due employees in the amount they are
2 required to contribute for any supplemental health and welfare plan.

3 **§18B-7-5. Supplemental and additional retirement plans for**
4 **employees; payroll deductions; authority to match**
5 **employee contributions; retroactive curative and**
6 **technical corrective action.**

7 (a) Any reference in this code to the "additional retirement
8 plan" relating to state higher education employees means the "higher
9 education retirement plan" provided in this section. Any state
10 higher education employee participating in a retirement plan upon
11 the effective date of this section shall continue to participate in
12 that plan and may not elect to be governed by the provisions of law
13 applicable on the effective date of this section.

14 (b) The commission, on behalf of the council, governing boards
15 and itself, shall contract for a retirement plan for their
16 employees, to be known as the "Higher Education Retirement Plan".
17 The commission, council and governing boards shall make periodic
18 deductions from the salary payments due employees in the amount they
19 are required to contribute to the Higher Education Retirement Plan,
20 which deductions shall be six percent.

21 (c) The commission, council and governing boards may contract
22 for supplemental retirement plans for any or all of their employees
23 to supplement the benefits employees otherwise receive. The

1 commission, council and governing boards may make additional
2 periodic deductions from the salary payments due the employees in
3 the amount they are required to contribute for the supplemental
4 retirement plan.

5 (d) An organization, by way of additional compensation to their
6 employees, shall pay an amount, which, at a minimum, equals the
7 contributions of the employees into the higher education retirement
8 plan from funds appropriated to the commission, council or governing
9 board for personal services.

10 (e) As part of an overall compensation plan, the commission,
11 council or a governing board, each at its sole discretion, may
12 increase its contributions to any employee retirement plan to an
13 amount that exceeds the contributions of employees.

14 (f) Each participating employee has a full and immediate vested
15 interest in the retirement and death benefits accrued from all the
16 moneys paid into the Higher Education Retirement Plan or a
17 supplemental retirement plan for his or her benefit. Upon proper
18 requisition of a governing board, the commission or council, the
19 Auditor periodically shall issue a warrant, payable as specified in
20 the requisition, for the total contributions so withheld from the
21 salaries of all participating employees and for the matching funds
22 of the commission, council or governing board.

23 (g) Any person whose employment commences on or after July 1,
24 1991, and who is eligible to participate in the Higher Education

1 Retirement Plan, shall participate in that plan and is not eligible
2 to participate in any other state retirement system: *Provided, That*
3 the foregoing provision does not apply to a person designated as a
4 21st Century Learner Fellow pursuant to section eleven, article
5 three, chapter eighteen-a of this code. The additional retirement
6 plan contracted for by the governing boards prior to July 1, 1991,
7 remains in effect unless changed by the commission. Nothing in this
8 section considers employees of the council or governing boards as
9 employees of the commission, nor is the commission responsible or
10 liable for retirement benefits contracted by, or on behalf of, the
11 council or governing boards.

12 **§18B-7-6. Continuing education and professional development.**

13 (a) Each higher education organization shall establish and
14 operate an employee continuing education and development program
15 under a joint rule or rules promulgated by the commission and
16 council in accordance with article three-a, chapter twenty-nine-a
17 of this code. Funds allocated or made available for employee
18 continuing education and development may be used to compensate and
19 pay expenses for faculty or classified employees pursuing additional
20 academic study or training to equip themselves better for their
21 duties.

22 The rules shall encourage continuing education and staff
23 development and shall require that employees be selected on a
24 nonpartisan basis using fair and meaningful criteria which afford

1 all employees opportunities to enhance their skills. These rules
2 also may include reasonable provisions for the continuation or
3 return of any faculty or classified employee receiving the benefits
4 of the education or training, or for reimbursement by the state for
5 expenditures incurred on behalf of the faculty member or classified
6 employee.

7 (b) The commission and council shall provide additional,
8 regular, training and professional development for employees engaged
9 in human resources-related activities at all organizations beyond
10 training and professional development. The training and
11 professional development:

12 (1) Shall be mandatory with appropriate consideration given to
13 limiting travel demands on employees; and

14 (2) Shall be in addition to and may not supplant the training
15 and professional development regularly provided to any class of
16 employees by each organization prior to the effective date of this
17 section.

18 **§18B-7-7. Employment practices.**

19 (a) Each governing board, with the advice and assistance of the
20 staff council, shall promulgate and adopt a rule regarding the role
21 of part-time classified employees. The rule shall discourage the
22 hiring of part-time employees solely to avoid the payment of
23 benefits or in lieu of full-time employees and shall provide all
24 qualified classified employees who hold nine-month or ten-month

1 contracts with the opportunity to accept part-time or full-time
2 summer employment before new persons are hired for the part-time or
3 full-time employment.

4 (b) Each governing board, with the advice and assistance of the
5 staff councils and other groups representing classified employees,
6 shall promulgate and adopt a rule in accordance with section six,
7 article one, chapter eighteen-b of this code that discourages
8 temporary, nonemergency, institutionally-imposed changes in an
9 employee's work schedule; that maintains reasonable continuity in
10 working schedules and conditions for employees; and that requires
11 institutions to consider feasible and innovative ways to use the
12 institution's classified employees most efficiently, such
13 innovations may include, but are not limited to, flexibility in
14 employee scheduling, job-sharing and four-day work weeks.

15 **§18B-7-8. Reporting.**

16 (a) *Implementation reports.* -- For the fiscal years commencing
17 on July 1, 2011, and July 1, 2012, the commission and council
18 jointly shall report to the Select Committee on Higher Education
19 Personnel or to the Legislative Oversight Commission on Education
20 Accountability once during each six-month period on their progress
21 in designing, developing, implementing and administering the
22 personnel classification and compensation system established by this
23 article and articles eight, nine and nine-a of this chapter. The
24 initial report is due December 1, 2011, and shall include, but is

1 not limited to, the following information:

2 (1) A summary of findings generated by the human resources
3 audit conducted pursuant to section nine of this article;

4 (2) Documentation of professional staffing changes made in
5 compliance with section two-a, article four of this chapter;

6 (3) A systematic plan, including a time line, for designing,
7 developing, and implementing the classification and compensation
8 system contained in this article and articles eight, nine and nine-a
9 of this chapter;

10 (4) An explanation of the research design and time line for
11 completing studies identified in section sixteen of this article;

12 (5) An assessment of progress made by the governing boards
13 toward achieving full funding of the temporary classified employees'
14 salary schedule pursuant to section three, article nine of this
15 chapter;

16 (6) Detailed data disaggregated by organization and employee
17 category or classification, comparing funding for salaries of
18 faculty, classified employees and nonclassified employees as a
19 percentage of the average funding for each of these classes or
20 categories of employees among the organization's peers, in regional
21 or national markets, as appropriate, and among similar organizations
22 within the state systems of public higher education;

23 and

24 (7) Other data requested by the Legislature or considered

1 appropriate by the commission or council.

2 (b) Annual personnel reports. -- (1) No later than December 1,
3 2013, and annually thereafter, the commission and council shall
4 report to the Legislative Oversight Commission on Education
5 Accountability addressing the following issues:

6 (A) Progress made by organizations toward achieving full
7 funding of the temporary classified employees' salary schedule
8 pursuant to section three, article nine of this chapter; and

9 (B) Detailed data disaggregated by organization and employee
10 category or classification, comparing funding for salaries of
11 faculty, classified employees and nonclassified employees as a
12 percentage of the average funding for each of these classes or
13 categories of employees among the organization's peers, in the
14 state, region or national markets, as appropriate, and among similar
15 organizations within the state systems of public higher education.

16 (2) The commission and council shall prepare a human resources
17 report card summarizing the performance of organizations on key
18 human resources measures. The report card shall be presented to the
19 Legislative Oversight Commission on Education Accountability no
20 later than December 1, 2012, and annually thereafter, and shall be
21 made available to the general public. At a minimum, the human
22 resources report card shall contain the following data:

23 (A) Human resources department metrics by organization:

24 (i) Number of human resources staff;

1 (ii) Ratio of human resources staff to total number of full-
2 time equivalent employees;

3 (iii) Percentage of human resources staff functioning in
4 supervisory roles and percentage in administrative roles;

5 (iv) Number of positions reporting to the head of human
6 resources;

7 (v) Areas of human resources functions outsourced to external
8 entities;

9 (vi) Total expenses per full-time equivalent employee;

10 (vii) Tuition revenue per full-time equivalent employee.

11 (B) Human resources expense data:

12 (i) Ratio of human resources expenses to operating expenses;

13 (ii) Ratio of human resources expenses to number of full-time
14 equivalent employees; and

15 (iii) Total human resources expense per organization employee.

16 (C) Compensation data:

17 (i) Average amount of annual salary increase per full-time
18 equivalent organization employee;

19 (ii) Total amount of organization employee salaries as a
20 percent of operating expenses;

21 (iii) Total amount of organization employee benefit costs as
22 a percent of cash compensation.

23 (D) System metrics:

24 (i) Comparisons of faculty salaries at each organization to

1 market averages;

2 (ii) Comparisons of classified and nonclassified employee
3 salaries at each organization to current market averages;

4 (E) An account of the total amount, type of training or
5 professional development provided, the number of employees who
6 participated and the overall cost of the training and professional
7 development provided to employees pursuant to section six of this
8 article; and

9 (F) Other measures the commission or council considers
10 appropriate to assist policymakers in evaluating the degree of
11 success in implementing best human resources practices by higher
12 education organizations.

13 (c) Job classification system report. -- (1) By July 1, 2014,
14 and at least once within each five-year period thereafter, the
15 commission and council jointly shall review the effectiveness of the
16 system for classifying jobs and submit an in-depth report to the
17 Legislative Oversight Commission on Education Accountability. The
18 report shall include, but is not limited to, findings,
19 recommendations and supporting documentation regarding the following
20 job classification issues:

21 (A) The effectiveness of the point factor methodology and a
22 determination of whether it should be maintained; and

23 (B) The status of the job evaluation plan, including the
24 factors used to classify jobs or their relative values, and a

1 determination of whether the plan should be adjusted.

2 (d) It is the responsibility of the head of human resources for
3 each organization to prepare and submit to the president or chief
4 executive officer all human resources data requested by the
5 commission and council. The president or executive officer of each
6 organization shall submit the requested data at times established
7 by the commission and council.

8 (e) In meeting reporting requirements established by this
9 article and articles eight, nine and nine-a of this chapter:

10 (1) The commission and council shall use the most recent data
11 available and, as appropriate, shall benchmark it against national
12 and regional markets or peer data; and

13 (2) With the exception of the semiannual implementation
14 reports, the annual human resources report card and any other report
15 designated as due no later than a date certain, the commission and
16 council may combine two or more personnel reports if the dates on
17 which they are due to the Legislature fall within a sixty-day
18 period.

19 **§18B-7-9. Human resources audits.**

20 (a) The commission and council jointly shall contract for an
21 initial human resources audit of each organization to be carried out
22 by an external vendor possessing experience and expertise in
23 conducting these audits. The initial audit shall be completed by
24 October 1, 2011, and shall be designed to compare current human

1 resources practices at each organization to best practices, to
2 identify areas of strength or deficiency, to identify functions that
3 should be the responsibility of human resources department, but are
4 incorrectly assigned or carried out by other offices within each
5 organization, to assist in targeting employee training and
6 development, to determine the degree to which organizations are
7 adhering to state and federal laws and to provide data necessary to
8 guide policy makers in developing personnel rules and implementing
9 the classification and compensation system.

10 (b) Following completion of the initial human resources audit,
11 the commission and council jointly shall conduct a systematic human
12 resources audit of each organization at least once within each five-
13 year period.

14 (1) The audit shall focus on correcting areas of deficiency
15 identified by previous audits, on compliance with statutory mandates
16 contained in this article and articles eight, nine and nine-a of
17 this chapter and on adherence to personnel rules of the commission
18 and council.

19 (2) In the absence of special circumstances, the commission and
20 council shall provide organizations with reasonable notice prior to
21 conducting a human resources audit and shall identify the subjects
22 to be examined in the audit.

23 **§18B-7-10. Compensatory time off in lieu of overtime; written**
24 **agreement; other conditions.**

1 (a) Notwithstanding any provision of this code to the contrary,
2 in lieu of overtime compensation, employees of higher education
3 organizations may receive compensatory time off at a rate not less
4 than one and one-half hours for each hour of employment. Employees
5 may receive compensatory time only under the following conditions:

6 (1) The time is awarded pursuant to a written agreement between
7 the employer and the employee arrived at before the work is
8 performed. A written agreement may be modified at the request of
9 the employer or employee, but under no circumstances may changes in
10 the agreement deny an employee compensatory time already acquired;

11 (2) The time is recorded in the employer's record of hours
12 worked; and

13 (3) The employee has not accrued compensatory time in excess
14 of the prescribed limits.

15 (b) An employee may accrue up to four hundred eighty hours of
16 compensatory time if the employee's work is a public safety
17 activity, an emergency response activity or a seasonal activity.

18 An employee engaged in other work may accrue up to two hundred forty
19 hours of compensatory time. An employee who has accrued four
20 hundred eighty or two hundred forty hours of compensatory time, as
21 the case may be, shall be paid overtime compensation for additional
22 hours of work. If compensation is paid to an employee for accrued
23 compensatory time, the compensation shall be paid at the regular
24 rate earned by the employee at the time the employee received the

1 payment.

2 (c) If employment is terminated, an employee who has accrued
3 compensatory time pursuant to this section, shall be paid for the
4 unused compensatory time at a rate of compensation not less than the
5 higher amount calculated using one of the following formulas:

6 (1) The average regular rate received by the employee during
7 the first three years of the employee's employment; or

8 (2) The final regular rate received by the employee.

9 (d) An employee who has accrued compensatory time as authorized
10 by this section, and who has requested the use of compensatory time,
11 shall be permitted by the employer to use this time within a
12 reasonable period after making the request if the use of the
13 compensatory time does not unduly disrupt the operation of the
14 employing agency. Compensatory time must be used within one year
15 from the time it is accrued.

16 **§18B-7-11. Employees designated as nonclassified; limits; reports**
17 **required.**

18 (a) Notwithstanding any provisions of this code to the
19 contrary, by July 1, 2015, the percentage of personnel placed in the
20 category of "nonclassified" at a higher education organization may
21 not exceed twenty percent of the total number of classified and
22 nonclassified employees of that organization as those terms are
23 defined in section two, article nine-a of this chapter and who are
24 eligible for membership in a state retirement system of the State

1 of West Virginia or other retirement plan authorized by the state,
2 except as set forth in subsection (c) of this section.

3 (b) A higher education organization which has more than twenty
4 percent of its employees placed in the category of "nonclassified"
5 as defined by subsection (a) of this section on July 1, 2011, shall
6 reduce the number of nonclassified employees to no more than twenty-
7 five percent by July 1, 2013, and to no more than twenty percent by
8 July 1, 2015.

9 (c) For the purposes of determining the ratio of nonclassified
10 employees pursuant to this section, the following conditions apply:

11 (1) Employees of the Commission and the chancellor for higher
12 education and employees of the council and the chancellor for
13 community and technical college education are considered as one
14 organization;

15 (2) Organizations may count as faculty or classified employees,
16 respectively, administrators who retain the right to return to
17 faculty or classified employee positions;

18 (3) Coaches are excluded from calculation of the ratio. The
19 commission and the council shall include consideration of this
20 employee category in each audit required by section nine of this
21 article and shall monitor organizations' use of this category and
22 include this information in the reports required by subsections (a)
23 and (b), section eight of this article; and

24 (4) The governing boards of Marshall University or West

1 Virginia University may place up to twenty-five percent of the total
2 number of classified and nonclassified employees of that
3 organization in the category of "nonclassified" under the following
4 conditions:

5 (A) The governing board of the institution votes to approve any
6 percentage number above twenty percent; and

7 (B) The governing board seeks and receives approval of the
8 commission before increasing the total above twenty percent.

9 (d) The Vice Chancellor for Human Resources shall monitor the
10 progress of the organizations in meeting the deadlines established
11 in this section and shall make a preliminary compliance report to
12 the Legislative Oversight Commission on Education Accountability by
13 September 1, 2013, and a final report on organization compliance to
14 that body by September 1, 2015.

15 **§18B-7-12. Additional employment by mutual agreement; agreement to**
16 **be filed with governing board.**

17 In accordance with duly promulgated rules of the governing
18 board and the commission or council, as appropriate, the president
19 or chief executive officer of an organization, or his or her
20 designated representative, and a classified employee at the
21 organization may agree mutually on duties to be performed by the
22 employee in addition to those duties listed in the job description.
23 The written agreement shall describe the additional duties to be
24 performed, the length of time the agreement shall be in force and

1 the additional compensation to be paid. These terms and conditions
2 shall be agreed upon by the president or chief executive officer and
3 the classified employee and shall be signed by both parties to the
4 agreement and filed with the appropriate governing board.

5 **§18B-7-13. Probationary employment period; evaluation.**

6 Each full-time classified employee hired by an organization
7 shall serve an initial probationary period of six months. At the
8 end of the probationary period, the employee shall receive a written
9 evaluation of his or her performance. The employee's supervisor
10 shall meet with the employee and explain the contents of the
11 evaluation and whether the employee is being offered regular
12 employment.

13 **§18B-7-14. Higher education employees' catastrophic leave bank and**
14 **leave transfer.**

15 (a) For the purposes of this section, "employee" means:

16 (1) A classified or nonclassified employee who is employed by
17 a higher education governing board, by the commission or the
18 council; or

19 (2) A faculty member, as defined in section one, article eight
20 of this chapter, who is eligible to accrue sick leave.

21 (b) An employee may donate sick and annual leave to a leave
22 bank established and operated in accordance with subsection (d) of
23 this section or directly to another employee in accordance with
24 subsection (e) of this section. No employee may be compelled to

1 donate sick or annual leave. Any leave donated by an employee
2 pursuant to this section shall be used only for the purpose of
3 catastrophic illness or injury as defined in subsection (c) of this
4 section and shall reduce, to the extent of such donation, the number
5 of days of annual or sick leave to which the employee is entitled.

6 (c) For the purpose of this section, a catastrophic illness or
7 injury is one that is expected to incapacitate the employee and
8 create a financial hardship because the employee has exhausted all
9 sick and annual leave and other paid time off. Catastrophic illness
10 or injury also includes an incapacitated immediate family member as
11 defined by a governing board, the commission or the council, as
12 appropriate, if this results in the employee being required to take
13 time off from work for an extended period of time to care for the
14 family member and if the employee has exhausted all sick and annual
15 leave and other paid time off.

16 (d) A leave bank or banks may be established at each state
17 institution of higher education, the commission or the council to
18 which employees may donate either sick or annual leave. The bank
19 or banks may be established jointly by the policy commission and the
20 governing boards or may be established for the commission, the
21 council, and each of the governing boards. Sick or annual leave may
22 be deposited in the leave bank, and shall be reflected as a day-for-
23 day deduction from the sick or annual leave balance of the
24 depositing employee.

1 Donated leave may be withdrawn by any employee experiencing a
2 catastrophic illness or injury when the following conditions are
3 met:

4 (1) The president of the institution or the chancellor of the
5 commission or the council, as appropriate, verifies that the
6 employee is unable to work due to the catastrophic illness or
7 injury; and

8 (2) The president of the institution or a chancellor, as
9 appropriate, approves the withdrawal and provides written notice to
10 the personnel office.

11 The withdrawal shall be reflected as a day-for-day addition to
12 the leave balance of the withdrawing employee.

13 (e) Sick or annual leave may be donated to an employee
14 experiencing a catastrophic illness or injury. The leave shall be
15 donated at the request of the employee after appropriate
16 verification that the employee is unable to work due to the
17 catastrophic illness or injury as determined by the president of the
18 institution or the appropriate chancellor. When transfer of sick
19 or annual leave is approved by the president of the institution or
20 the appropriate chancellor, any employee may donate sick or annual
21 leave in one-day increments by providing written notice to the
22 personnel office. Donations shall be reflected as a day-for-day
23 deduction from the sick or annual leave balance of the donating
24 employee. An employee receiving the donated sick or annual leave

1 shall have any time which is donated credited to his or her account
2 in one-day increments and reflected as a day-for-day addition to the
3 leave balance of the receiving employee.

4 (f) Use of donated credits may not exceed a maximum of twelve
5 continuous calendar months for any one catastrophic illness or
6 injury.

7 (1) The total amount of sick or annual leave withdrawn or
8 received may not exceed an amount sufficient to ensure the
9 continuance of regular compensation and may not be used to extend
10 insurance coverage pursuant to section thirteen, article sixteen,
11 chapter five of this code.

12 (2) An employee withdrawing or receiving donations of sick or
13 annual leave pursuant to this section shall use any leave personally
14 accrued on a monthly basis prior to receiving additional donated
15 sick or annual leave.

16 (g) Donated sick or annual leave deposited in an institutional
17 leave bank or transferred under subsection (d) of this section may
18 be inter-institutional in accordance with the policies of the
19 appropriate governing board. Each institution, the commission or
20 the council is responsible for the administration of the sick or
21 annual leave deposits, withdrawals and transfers of its employees.
22 Rules implementing the provisions of this section may be adopted
23 jointly or separately by the governing boards, the commission or the
24 council in accordance with section six, article one of this chapter

1 and, in the case of the commission and council, in accordance with
2 article three-a, chapter twenty-nine-a of this code.

3 **§18B-7-15. Merit increases.**

4 Higher education organizations may grant merit increases which
5 are in accordance with this article and articles eight, nine and
6 nine-a of this chapter and with duly promulgated rules of the
7 commission and council.

8 **§18B-7-16. Study of employment practices.**

9 (a) The commission and council shall study the following issues
10 relating to employment practices:

11 (1) Developing a fair and rational policy based upon best human
12 resources practices for covering reductions in force, furloughs and
13 other issues relating to seniority including determining how
14 employees shall be treated whose salaries are derived from funds
15 other than state appropriations;

16 (2) Determining the advantages and disadvantages of maintaining
17 the internal preferences for hiring, promoting and transferring
18 classified employees;

19 (3) Collecting and analyzing data and developing
20 recommendations on the advantages and disadvantages of outsourcing
21 certain functions at the organization level. The data shall
22 include, but are not limited to, the following items:

23 (A) A current database of outsourcing practices followed by
24 each organization including procedures or rules developed to inform

1 policy decisions;

2 (B) The total number, disaggregated by organization, of
3 positions or services being outsourced or filled by temporary
4 employees;

5 (C) The amount of actual cost savings, if any, that are
6 realized or may be realized as a direct result of organizations'
7 outsourcing decisions;

8 (4) Recommending a rational, uniform policy to determine the
9 status of employees whose positions are funded, in whole or in part,
10 by an external grant or contract from a federal, state, local
11 government or private entity.

12 (b) The commission and council shall complete the work and
13 report their findings, conclusions and recommendations, together
14 with drafts of any legislation necessary to effectuate the
15 recommendations, to the Select Committee on Higher Education
16 Personnel or the Legislative Oversight Commission on Education
17 Accountability no later than January 1, 2012.

18 **ARTICLE 8. HIGHER EDUCATION FACULTY.**

19 **§18B-8-1. Definitions.**

20 As used in this article:

21 (a) "Academic rank", "rank" or "faculty rank" means the
22 position held by a faculty member as determined by the president,
23 consistent with a rule promulgated and adopted by the governing
24 board, and includes the positions of professor, associate professor,

1 assistant professor and instructor. All other ranks are excluded
2 from the provisions of this article.

3 (b) "Salary" means the total nine-month or ten-month salary
4 paid from state funds to a full-time faculty member, or if the
5 employment period is other than nine or ten months, the total salary
6 adjusted to a nine-month base salary;

7 (c) "Full-time faculty" means a faculty member so designated
8 by the president, consistent with the duly promulgated and adopted
9 rule of the appropriate governing board, and those persons with
10 faculty rank who have research or administrative responsibilities.

11 **§18B-8-2. Faculty salary rules; salary increase upon promotion in**
12 **rank.**

13 (a) Each governing board shall promulgate and adopt a faculty
14 salary rule in accordance with section six, article one of this
15 chapter which furthers the goals of attracting, retaining and
16 rewarding high quality faculty. Faculty salary increases shall be
17 distributed within each organization in accordance with the faculty
18 salary rule.

19 (b) The salary of a full-time faculty member may not be reduced
20 by the provisions of this article.

21 (c) The faculty salary rule shall pursue the following goals:

22 (1) The salary of each full-time faculty member within a
23 discipline group is competitive with those in similar disciplines
24 at peer institutions;

1 (2) Faculty are recognized for outstanding performance;

2 (3) Equity among salaries is maintained; and

3 (4) The faculty at each institution are effectively involved
4 in the administration of the faculty salary rule.

5 (d) Each faculty member shall receive a salary increase of ten
6 percent when he or she is promoted in rank.

7 **§18B-8-3. Authority to grant sabbatical leave.**

8 A governing board may grant sabbatical leaves to faculty
9 members at the state institution of higher education under its
10 jurisdiction for the purpose of permitting them to engage in
11 graduate study, research or other activities calculated to improve
12 their teaching ability. A governing board may grant a request for
13 sabbatical leave only in accordance with the uniform rule it has
14 promulgated and adopted. A governing board may not adopt a rule
15 which provides for granting sabbatical leave to a faculty member who
16 has served fewer than six years at the institution where presently
17 employed, nor which provides for leave for more than one half the
18 contract period at full pay or for a full contract period at half
19 pay. A faculty member receiving a sabbatical leave is required to
20 return and serve the institution granting the leave for at least one
21 year or to repay to the institution the compensation received during
22 leave. A faculty member returning from leave shall be reinstated
23 at the academic rank held immediately prior to taking sabbatical
24 leave unless he or she is promoted to a higher rank and is entitled

1 to the salary and any salary increases appropriate to his or her
2 rank and years of experience. The compensation for a faculty member
3 on sabbatical leave is paid by the institution where employed from
4 its regular personal services appropriations.

5 **§18B-8-4. Effect of leave of absence on academic tenure, rank, etc.**

6 (a) Notwithstanding any provision of law to the contrary, a
7 tenured professional at a state institution of higher education who
8 is absent from duties at the institution to accept employment in a
9 nonelected governmental capacity is afforded the benefits of
10 academic tenure, rank and position as if he or she had remained
11 continuously in the position retained and held at the institution
12 immediately preceding the absence if the following conditions are
13 met:

14 (1) The absence is approved by the president of the state
15 institution of higher education by which the professional is
16 employed;

17 (2) The leave of absence does not exceed two years; or

18 (3) If the leave of absence extends for more than two years,
19 the president requests approval from the governing board for the
20 absence in writing each year and the board approves each request up
21 to eight full years.

22 (b) An individual who remains in governmental employment with
23 leave granted in accordance with this section forfeits all rights
24 to academic tenure, rank and position formerly held at the employing

1 institution at the end of the eighth year of government employment.

2 **§18B-8-5. Notice to probationary faculty members of retention or**
3 **nonretention; hearing.**

4 (a) For the purposes of this section, "Probationary faculty
5 member" means the definition adopted in a joint rule promulgated by
6 the commission and council. The rights provided to probationary
7 faculty members by this section are in addition to, and not in lieu
8 of, other rights afforded to them by other rules and other
9 provisions of law.

10 (b) The president of each state institution of higher education
11 shall give written notice concerning retention or nonretention for
12 the ensuing academic year to a probationary faculty member not later
13 than March 1.

14 (c) If a probationary faculty member who is not retained so
15 requests the president or his or her designee shall inform the
16 probationary faculty member by certified mail within ten days of the
17 reasons for nonretention. A probationary faculty member who desires
18 to appeal the decision may proceed to level three of the grievance
19 procedure established in article two, chapter six-c of this code.
20 If the administrative law judge decides that the reasons for
21 nonretention are arbitrary, capricious or without a factual basis,
22 the faculty member shall be retained for the ensuing academic year.

23 **§18B-8-6. Faculty employment practices; campus administrators**

1 required to teach or perform research.

2 Each governing board, with the advice and assistance of the
3 faculty senate, shall promulgate and adopt a rule in accordance with
4 section six, article one of this chapter addressing the following
5 issues:

6 (a) Defining an appropriate balance between full-time and
7 adjunct faculty members and the appropriate role of adjunct faculty;
8 and

9 (b) Requiring each administrator on each campus who holds
10 faculty rank to teach at least one course during each eighteen-month
11 employment period or to perform on-going research in lieu of
12 teaching.

13 **ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE SALARY SCHEDULE;**
14 **CLASSIFICATION AND COMPENSATION SYSTEM.**

15 **§18B-9-1. Legislative purpose and intent.**

16 (a) The purpose of the Legislature in enacting this article is
17 to require the commission and council jointly to implement, control,
18 supervise and manage a complete, uniform system of personnel
19 classification and compensation in accordance with the provisions
20 of this article for classified employees at higher education
21 organizations.

22 (b) It is the intent of the Legislature to require each higher
23 education organization to achieve full funding of the salary

1 schedule established in section three of this article. A higher
2 education organization, as defined in section two, article nine-a
3 of this chapter, is subject to the provisions of this article until
4 full funding is reached.

5 (c) It is further the intent of the Legislature to encourage
6 strongly that each organization dedicate a portion of future tuition
7 increases to fund the classified salary schedule and, after full
8 funding of the salary schedule is achieved, to move toward meeting
9 salary goals for faculty, classified and nonclassified employees.

10 **§18B-9-2. Definitions.**

11 The following words have the meanings ascribed to them unless
12 the context clearly indicates a different meaning:

13 (a) "Classified employee" or "employee" means a regular full-
14 time or regular part-time employee of an organization who holds a
15 position that is assigned a particular job title and pay grade in
16 accordance with the personnel classification and compensation system
17 established by this article or by the commission and council;

18 (b) "Job description" means the specific listing of duties and
19 responsibilities as determined by the appropriate governing board,
20 the commission or council and associated with a particular job
21 title;

22 (c) "Job title" means the name of the position or job as
23 defined by the commission and council;

24 (d) "Pay grade" means the number assigned by the commission and

1 council to a particular job title and refers to the vertical column
2 heading of the salary schedule established in section three of this
3 article;

4 (e) "Personnel classification system" means the process of job
5 categorization adopted by the commission and council jointly by
6 which job title, job description, pay grade and placement on the
7 salary schedule are determined;

8 (f) "Salary" means the amount of compensation paid through the
9 State Treasury per annum, excluding those payments made pursuant to
10 section two, article five, chapter five of this code, to an
11 organization employee;

12 (g) "Schedule" or "salary schedule" means the grid of annual
13 salary figures established in section three of this article; and

14 (h) "Years of experience" means the number of years a person
15 has been an employee of the State of West Virginia and refers to the
16 horizontal column heading of the salary schedule established in
17 section three of this article. For the purpose of placement on the
18 salary schedule, employment for nine months or more equals one year
19 of experience, but a classified employee may not accrue more than
20 one year of experience during any given fiscal year. Employment for
21 less than full time or for fewer than nine months during any fiscal
22 year shall be prorated. In accordance with rules established by the
23 commission and council jointly, a classified employee may be granted
24 additional years of experience not to exceed the actual number of

1 years of prior, relevant work or experience at accredited
2 institutions of higher education other than state institutions of
3 higher education.

4 **§18B-9-3. Temporary higher education classified employee annual**
5 **salary schedule.**

6 (a) There is hereby continued a temporary state annual salary
7 schedule for classified employees consisting of a minimum annual
8 salary for each pay grade in accordance with years of experience.
9 Nothing in this article guarantees payment to a classified employee
10 of the salary indicated on the schedule at the actual years of
11 experience. The minimum salary herein indicated shall be prorated
12 for classified employees working fewer than thirty-seven and one-
13 half hours per week. For the purposes of this article and article
14 nine-a, despite any differences in salaries that may occur, a
15 classified employee is equitably compensated in relation to other
16 classified employees in the same pay grade if the following
17 conditions exist:

18 (1) His or her annual salary is at least the minimum salary
19 that was required for his or her pay grade and years of experience
20 on July 1, 2001, on the salary schedule included in this section;
21 and

22 (2) Progress is being made by the institution in meeting the
23 salary goals set out in this article and article nine-a.

24 (b) Nothing in this section requires an appropriation by the

1 Legislature in excess of the legislative funding priorities as set
2 forth in this chapter.

3 (c) For purposes of this article, an organization has achieved
4 full funding of the temporary salary schedule established by this
5 section when it provides, in total, one hundred percent of the funds
6 needed to meet the salary funding target as calculated in October,
7 2009, in a report, required by a prior enactment of this section,
8 and presented to the Legislative Oversight Commission on Education
9 Accountability. Until an organization has achieved full funding as
10 described and has received certification to this effect from the
11 commission or council, as appropriate, the following requirements
12 apply:

13 (1) Classified salary increases distributed within the
14 organization shall be provided in accordance with the uniform
15 classification and compensation system established by this article
16 and rules of the commission and council and shall be applied toward
17 achieving full funding of the temporary salary schedule; and

18 (2) An organization may not provide discretionary salary
19 increases, including merit or performance-based increases, to the
20 president or chief executive officer of an organization or to any
21 group or class of employees within the organization, other than
22 classified employees, unless the organization has achieved full
23 funding of the salary schedule established in this section or is
24 making appropriate progress toward achieving full funding of the

1 salary schedule, except governing boards under the jurisdiction of
2 the council, may provide discretionary increases with prior approval
3 of the council.

4 (A) This prohibition does not apply to salary increases
5 mandated by law.

6 (B) For the purposes of subdivision (2) of this subsection,
7 "appropriate progress" has the following meanings:

8 (i) For governing boards under the jurisdiction of the
9 commission, appropriate progress means an organization has funded
10 at least twenty-five percent of the amount needed to reach full
11 funding of the salary schedule by July 1, 2012, as calculated
12 pursuant to this subsection; has funded at least fifty percent of
13 the calculated amount by July 1, 2013; has funded at least seventy-
14 five percent of the calculated amount by July 1, 2014; and has
15 funded one hundred percent of the calculated amount by July 1, 2015;
16 and

17 (ii) For governing boards under the jurisdiction of the
18 council, appropriate progress means an organization has funded at
19 least twenty five percent of the amount needed to real full funding
20 of the salary schedule by July 1, 2014, as calculated pursuant to
21 this subsection; has funded at least fifty percent of the calculated
22 amount by July 1, 2015; has funded at least seventy-five percent of
23 the calculated amount by July 1, 2016; and has funded one hundred
24 percent of the calculated amount by July 1, 2017.

TEMPORARY HIGHER EDUCATION CLASSIFIED EMPLOYEE

ANNUAL SALARY SCHEDULE

YEARS OF EXPERIENCE

<u>PAY</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>
<u>GRADE</u>									
1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900	15,221
2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687	16,036
3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546	16,925
4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478	17,872
5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469	18,906
6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547	20,013
7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697	21,192
8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950	22,489
9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290	23,887
10	19,916	20,421	20,938	21,484	22,029	22,602	23,176	23,763	24,379
11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288	25,945
12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924	27,638
13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701	29,470
14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631	31,470
15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715	33,624
16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981	35,974
17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456	38,519
18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142	41,303
19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064	47,410
20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460	50,941
21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170	54,786
22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224	58,975
23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653	63,568
24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485	68,579
25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781	74,070

<u>PAY</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>
<u>GRADE</u>							
1	15,541	15,876	16,226	16,575	16,939	17,304	17,682
2	16,386	16,750	17,129	17,507	17,886	18,294	18,687
3	17,304	17,697	18,090	18,498	18,920	19,343	19,780
4	18,279	18,702	19,139	19,576	20,027	20,493	20,959
5	19,343	19,794	20,260	20,741	21,222	21,717	22,227
6	20,479	20,974	21,469	21,994	22,518	23,057	23,596

1	<u>7</u>	<u>21,717</u>	<u>22,241</u>	<u>22,780</u>	<u>23,334</u>	<u>23,902</u>	<u>24,484</u>	<u>25,081</u>
2	<u>8</u>	<u>23,042</u>	<u>23,610</u>	<u>24,193</u>	<u>24,805</u>	<u>25,416</u>	<u>26,043</u>	<u>26,684</u>
3	<u>9</u>	<u>24,484</u>	<u>25,096</u>	<u>25,737</u>	<u>26,378</u>	<u>27,048</u>	<u>27,732</u>	<u>28,417</u>
4	<u>10</u>	<u>25,008</u>	<u>25,638</u>	<u>26,295</u>	<u>26,980</u>	<u>27,666</u>	<u>28,379</u>	<u>29,106</u>
5	<u>11</u>	<u>26,617</u>	<u>27,316</u>	<u>28,015</u>	<u>28,757</u>	<u>29,498</u>	<u>30,267</u>	<u>31,064</u>
6	<u>12</u>	<u>28,365</u>	<u>29,120</u>	<u>29,890</u>	<u>30,687</u>	<u>31,498</u>	<u>32,323</u>	<u>33,176</u>
7	<u>13</u>	<u>30,267</u>	<u>31,078</u>	<u>31,918</u>	<u>32,771</u>	<u>33,652</u>	<u>34,561</u>	<u>35,484</u>
8	<u>14</u>	<u>32,323</u>	<u>33,204</u>	<u>34,114</u>	<u>35,051</u>	<u>36,002</u>	<u>36,981</u>	<u>38,002</u>
9	<u>15</u>	<u>34,561</u>	<u>35,512</u>	<u>36,505</u>	<u>37,512</u>	<u>38,547</u>	<u>39,624</u>	<u>40,715</u>
10	<u>16</u>	<u>36,981</u>	<u>38,030</u>	<u>39,093</u>	<u>40,198</u>	<u>41,331</u>	<u>42,492</u>	<u>43,694</u>
11	<u>17</u>	<u>39,624</u>	<u>40,757</u>	<u>41,918</u>	<u>43,121</u>	<u>44,352</u>	<u>45,611</u>	<u>46,925</u>
12	<u>18</u>	<u>42,506</u>	<u>43,736</u>	<u>44,995</u>	<u>46,296</u>	<u>47,639</u>	<u>49,023</u>	<u>50,450</u>
13	<u>19</u>	<u>48,801</u>	<u>50,238</u>	<u>51,719</u>	<u>53,230</u>	<u>54,801</u>	<u>56,416</u>	<u>58,062</u>
14	<u>20</u>	<u>52,452</u>	<u>54,023</u>	<u>55,623</u>	<u>57,284</u>	<u>58,990</u>	<u>60,755</u>	<u>62,550</u>
15	<u>21</u>	<u>56,431</u>	<u>58,137</u>	<u>59,902</u>	<u>61,712</u>	<u>63,568</u>	<u>65,482</u>	<u>67,472</u>
16	<u>22</u>	<u>60,785</u>	<u>62,640</u>	<u>64,555</u>	<u>66,530</u>	<u>68,579</u>	<u>70,674</u>	<u>72,828</u>
17	<u>23</u>	<u>65,527</u>	<u>67,562</u>	<u>69,656</u>	<u>71,826</u>	<u>74,040</u>	<u>76,344</u>	<u>78,708</u>
18	<u>24</u>	<u>70,734</u>	<u>72,948</u>	<u>75,237</u>	<u>77,601</u>	<u>80,039</u>	<u>82,552</u>	<u>85,156</u>
19	<u>25</u>	<u>76,419</u>	<u>78,842</u>	<u>81,356</u>	<u>83,944</u>	<u>86,607</u>	<u>89,360</u>	<u>92,202</u>

20 **§18B-9-4. Classified employee salary; payment beyond salary**
21 **schedule; conditions.**

22 (a) The current annual salary of a classified employee may not
23 be reduced by the provisions of this article nor by any other action
24 inconsistent with the provisions of this article.

25 (b) Nothing in this article prohibits promotion of a classified
26 employee to a job title carrying a higher pay grade if the promotion
27 is in accordance with the provisions of this article, the personnel
28 classification and compensation system and personnel rules of the
29 commission and council.

30 (c) An organization may pay classified employees in excess of
31 the salary established for their pay grade and years of experience
32 indicated on the salary schedule established by section three of
33 this article under the following conditions:

1 (1) The commission or council, as appropriate, certifies that
2 the organization has achieved full funding; and

3 (2) The governing board has promulgated and adopted a salary
4 rule in accordance with section six, article one of this chapter and
5 the rules of the commission and council establishing a procedure to
6 ensure that salary increases above the temporary salary schedule are
7 distributed equitably and in a manner that is consistent with the
8 uniform classification and compensation system.

9 **ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.**

10 **§18B-9A-1. Legislative intent and purpose.**

11 (a) The intent of the Legislature in enacting this article is
12 to establish the classification and compensation system for certain
13 employees of higher education organizations and apply recognized
14 best human resources practices in order to use available resources
15 in the most effective and efficient manner for the benefit of the
16 citizens of West Virginia.

17 It is further the intent of the Legislature to establish a plan
18 that is fair, accountable, credible, transparent and systematic.
19 In recognition of the importance of these qualities, this article,
20 together with articles seven, eight and nine of this chapter, is
21 designated and may be cited as "FACTs for Higher Education".

22 (b) In furtherance of the principles described in subsection
23 (a) of this section, the chief purposes of the classification and
24 compensation system are to accomplish the following objectives:

1 (1) Develop and implement a classification and compensation
2 system that is fair, transparent, understandable, simple to
3 administer, self-regulating and adaptable to meet future goals and
4 priorities;

5 (2) Provide current, reliable data to governing boards, the
6 commission, the council, the Governor and the Legislature to inform
7 the decision-making process of these policymakers;

8 (3) Attract well-qualified and diverse job applicants and
9 retain and motivate employees to accomplish the goals, objectives
10 and priorities identified in state law, rules of the commission and
11 council, the statewide master plans for higher education and the
12 institutions' compacts;

13 (4) Retain and reward employees who make valuable contributions
14 to state and organization goals, objectives and priorities;

15 (5) Compensate employees within an organization fairly in
16 relation to one another;

17 (6) Compensate employees across organizations who are
18 performing similar work at similar wage rates;

19 (7) Compensate employees at levels that are competitive with
20 appropriate external markets and are fiscally responsible;

21 (8) Improve the process for evaluating jobs, including, but not
22 limited to, mandating training and development in best human
23 resources practices and directing that key terms, job titles and
24 evaluation forms are consistent across organizations; and

1 (9) Ensure that regular market salary analyses are performed
2 to determine how organization compensation for all classes of
3 employees compares to compensation in relevant external markets.

4 **§18B-9A-2. Definitions.**

5 As used in this article and articles seven, eight and nine of
6 this chapter, the following words have the meanings ascribed to them
7 unless the context clearly indicates a different meaning:

8 (a) "Classification system" means the process by which jobs,
9 job titles, career ladders and assignment to pay grades are
10 determined.

11 (b) "Classified employee" or "employee" means any regular
12 employee of an organization who holds a position that is assigned
13 a particular job and job title within the classification system
14 established by this article, article nine and by duly promulgated
15 and adopted rules of the commission and council.

16 (c) "Job" means the total collection of tasks, duties and
17 responsibilities assigned to one or more individuals whose work is
18 of the same nature and level.

19 (d) "Job description" means a summary of the most important
20 features of a job, including the general nature and level of the
21 work performed.

22 (e) "Job evaluation" means a formal process used to create a
23 job worth hierarchy.

24 (f) "Job family" means a group of jobs having the same nature

1 of work, but requiring different levels of skill, effort,
2 responsibility or working conditions.

3 (g) "Job title" means the descriptive name for the total
4 collection of tasks, duties and responsibilities assigned to one or
5 more individuals whose positions have the same nature of work
6 performed at the same level.

7 (h) "Job worth hierarchy" means the perceived internal value
8 of jobs in relation to each other within an organization.

9 (i) "Nonclassified employee" means an employee of an
10 organization who holds a position that is not assigned a particular
11 job and job title within the classification system established by
12 this article, article nine, and by duly promulgated and adopted
13 rules of the commission and council and who meets one or more of the
14 following criteria:

15 (1) Holds a direct policy-making position at the department or
16 organization level; or

17 (2) Reports directly to the president or chief executive
18 officer of the organization.

19 (j) "Organization" means the commission, the council, an agency
20 or entity under the respective jurisdiction of the commission or the
21 council or a state institution of higher education as defined in
22 section two, article one of this chapter.

23 (k) "Pay grade" means the level to which a job is assigned
24 within a job worth hierarchy.

1 (l) "Point factor methodology" means a quantitative job
2 evaluation process in which elements of a job are given a factor
3 value and each factor is weighted according to its importance.

4 (m) "Position description" means a summary of the total duties
5 and responsibilities of a position based on factors provided in the
6 position information questionnaire (PIQ).

7 (n) "Position information questionnaire" or "PIQ" means a tool
8 used in the creation and evaluation of position descriptions and
9 includes the factors of knowledge, experience, complexity and
10 problem solving, freedom of action, scope and effect, breadth of
11 responsibility, intra-systems contacts, external contacts, direct
12 supervision of personnel, indirect supervision of personnel and
13 health, safety and physical considerations.

14 (o) "Step" means a standard progression in pay rate that is
15 established within a pay grade.

16 **§18B-9A-3. Applicability.**

17 (a) The provisions of this article apply to employees who meet
18 the following criteria:

19 (1) A classified employee whose employment, if continued,
20 accumulates to a minimum total of one thousand forty hours during
21 a calendar year and extends over at least nine months of a calendar
22 year; and

23 (2) A classified employee who is involuntarily transferred to
24 a nonclassified position for which he or she did not apply. A

1 classified employee involuntarily transferred to a nonclassified
2 position may exercise the rights set out in this section only for
3 positions equivalent to or lower than the last job title the
4 employee held.

5 (b) Until the commission or council, as appropriate, has
6 certified that an organization has achieved full funding of the
7 temporary classified employee annual salary schedule or is making
8 appropriate progress toward attaining full funding as defined by
9 section three, article nine of this chapter, the organization is
10 subject to article nine of this chapter and may not exercise
11 flexibility provisions in any area of human resources identified in
12 this chapter or in commission and council rule.

13 **§18B-9A-4. Job classification system; job classification committee**
14 **established; membership; meetings; powers and duties.**

15 (a) The commission and council jointly shall maintain a uniform
16 system for classifying jobs and positions of organization employees.

17 (b) The commission and council jointly shall establish and
18 maintain a job classification committee.

19 (1) The committee consists of the following members:

20 (A) The Vice Chancellor for Human Resources who chairs the
21 committee and votes only when a tie occurs;

22 (B) The Director of Classification, Compensation and Human
23 Resources Information Systems;

24 (C) The Vice Chancellor for Administration, ex officio,

1 nonvoting;

2 (D) One human resources director representing the organizations
3 under the jurisdiction of the commission, appointed by the
4 appropriate chancellor;

5 (E) One human resources director representing the organizations
6 under the jurisdiction of the council, appointed by the appropriate
7 chancellor;

8 (F) One human resources director representing the doctoral
9 degree-granting institutions appointed by the appropriate
10 chancellor. This individual may not represent the same institution
11 that is represented by the membership position provided in paragraph
12 (I) of this subdivision;

13 (G) One classified employee representing the organizations
14 under the jurisdiction of the commission, appointed by the Advisory
15 Council of Classified Employees;

16 (H) One classified employee representing the organizations
17 under the jurisdiction of the council, appointed by the Advisory
18 Council of Classified Employees;

19 (I) One classified employee representing the doctoral degree-
20 granting institutions appointed by the advisory council of
21 classified employees. This individual may not represent the same
22 institution that is represented by the membership position provided
23 in paragraph (F) of this subdivision;

24 (J) The chair of the ad hoc Classification Subcommittee created

1 by the Vice Chancellor for Administration pursuant to section
2 thirteen, article one-b of this chapter, who serves one nonrecurring
3 four-year term. At the end of four years, the chair may be
4 appointed to serve one additional consecutive four-year term, but
5 only if he or she fills a committee membership position representing
6 a constituency group named in this subdivision; and

7 (K) Three members of the ad hoc Classification Subcommittee,
8 appointed by the Vice Chancellor for Human Resources, who serve two-
9 year, nonrecurring terms and are not eligible to succeed themselves
10 to consecutive terms. These members provide continuity and
11 information to other members on changes to the job evaluation plan
12 and point factor methodology recommended by the subcommittee and
13 help to ensure consistency in classification decisions.

14 (2) An organization may not have more than two members serving
15 on the committee at any time. A human resources director currently
16 serving on the Job Evaluation Committee created by the commission
17 and council may not be appointed or selected to fill an initial term
18 on the Job Classification Committee. Membership is rotated in order
19 to provide for participation from each organization.

20 (3) Members serve staggered terms. With the exception of
21 members who serve pursuant to paragraphs (J) and (K), subdivision
22 (1), subsection (b) of this section, one third of the initial
23 appointments shall be for two years, one-third for three years and
24 one-third for four years. Thereafter, all terms are four years.

1 A member may not serve more than four years consecutively. The Vice
2 Chancellor for Human Resources shall certify that appointments to
3 the committee are made in accordance with this section. If the
4 groups responsible for appointing members fail to do so within a
5 reasonable time, the Vice Chancellor shall select members from the
6 named constituency group to serve on the committee. A majority of
7 the voting members serving on the committee at a given time
8 constitutes a quorum for the purpose of conducting business.

9 (c) Powers and duties of the committee include, but are not
10 limited to, the following:

11 (1) Modifying and deleting jobs and assigning job titles;

12 (2) Reviewing and revising job titles to make them consistent
13 among organizations, including adopting consistent title
14 abbreviations;

15 (3) Establishing job worth hierarchies and data lines for each
16 job title;

17 (4) Classifying jobs, establishing proper pay grades and
18 placing jobs in pay grades consistent with the job evaluation plan;

19 (5) Determining when new job titles are needed and creating new
20 job titles within the system;

21 (6) Recommending base pay enhancements for jobs for which the
22 application of point factor methodology produces significantly lower
23 salaries than external market pricing. The committee may exercise
24 this authority only if it reevaluates each job annually to make a

1 determination whether the enhancement should be continued;

2 (7) Recommending a procedure for performing job family reviews;

3 (8) Determining appropriate career ladders within the

4 classification system and establishing criteria for career

5 progression; and

6 (9) Hearing job classification appeals prior to commencement

7 of the formal grievance process pursuant to commission and council

8 rule.

9 (d) The committee shall meet monthly if there is business to

10 conduct and also may meet more frequently at the call of the chair.

11 When evaluating jobs, the committee shall use the following

12 procedure:

13 (1) Each committee member shall classify each job individually,

14 independently of other members;

15 (2) The chair shall compile and share the individual

16 evaluations with the whole committee; and

17 (3) After discussing the issues and resolving differences, the

18 committee shall make a determination of the appropriate

19 classification for each job.

20 (e) The commission and council shall use a point factor

21 methodology to classify jobs. The commission and council jointly

22 may adjust the job evaluation plan, including the factors used to

23 classify jobs and their relative values, at any time.

24 (f) No later than July 1, 2012, the commission and council

1 shall have in place an up-to-date job description for every
2 classified job.

3 (g) The commission and council shall develop a position
4 information questionnaire to be used by all organizations to gather
5 data necessary for classification of positions within the job worth
6 hierarchy.

7 **§18B-9A-5. Compensation planning and review committee established;**

8 **membership; meetings; powers and duties.**

9 (a) The commission and council jointly shall establish and
10 maintain a compensation planning and review committee. Within the
11 guidelines established in this article and articles seven, eight,
12 and nine of this chapter, the committee shall manage all aspects of
13 compensation planning and review that the commission and council
14 jointly delegate to it.

15 (b) The committee consists of the following members:

16 (1) The Vice Chancellor for Human Resources who chairs the
17 committee and votes only when a tie occurs;

18 (2) One classified employee representing the organizations
19 under the jurisdiction of the commission, appointed by the Advisory
20 Council of Classified Employees;

21 (3) One classified employee representing the organizations
22 under the jurisdiction of the council, appointed by the Advisory
23 Council of Classified Employees;

24 (4) One classified employee representing the doctoral degree-

1 granting institutions appointed by the Advisory Council of
2 Classified Employees. This individual may not represent the same
3 institution that is represented by the membership position provided
4 in subdivision (11) of this subsection;

5 (5) One faculty member representing the organizations under the
6 jurisdiction of the commission, appointed by the advisory council
7 of faculty;

8 (6) One faculty member representing the organizations under the
9 jurisdiction of the council, appointed by the advisory council of
10 faculty;

11 (7) One president appointed by the Chancellor for Higher
12 Education;

13 (8) One president appointed by the Chancellor for Community and
14 Technical College Education;

15 (9) One human resources professional representing the
16 organizations under the jurisdiction of the commission, appointed
17 by the Vice Chancellor for Human Resources;

18 (10) One human resources professional representing the
19 organizations under the jurisdiction of the council, appointed by
20 the Vice Chancellor for Human Resources;

21 (11) One human resources professional representing the doctoral
22 degree-granting institutions appointed by the appropriate
23 chancellor. This individual may not represent the same institution
24 that is represented by the membership position provided in

1 subdivision (4) of the subsection;

2 (12) The Director of Classification, Compensation and Human
3 Resources Information Systems;

4 (13) The Vice Chancellor for Administration, ex officio,
5 nonvoting; and

6 (14) Additionally, the initial committee membership includes
7 the chair of the ad hoc Market Study Committee and the chair of the
8 ad hoc Compensation Steps Committee, both committees created by the
9 Vice Chancellor for Administration pursuant to section thirteen,
10 article one-b of this chapter. These members each serve one
11 nonrecurring four-year term. At the end of four years, the chairs
12 may be appointed to serve one additional consecutive four-year term,
13 but only if they fill a committee membership position representing
14 a constituency group named in this subsection.

15 (c) The committee shall meet at least quarterly and at other
16 times at the call of the chair. A majority of the voting members
17 serving on the committee at a given time constitutes a quorum for
18 the purpose of conducting business.

19 (d) The terms of members are staggered. Of the initial
20 appointments, excluding the chairs of the Market Study Committee and
21 the Compensation Steps Committee, one-third shall be for two years,
22 one-third for three years and one-third for four years. Thereafter,
23 all terms are for four years. The Vice Chancellor for Human
24 Resources shall certify that appointments to the committee are made

1 in accordance with this section. If the groups responsible for
2 appointing members fail to do so within a reasonable time, the vice
3 chancellor shall select members from the named constituency group
4 to serve on the committee.

5 (e) Subject to the exception in subdivision (12), subsection
6 (b) of this section, members of the committee may serve no more than
7 four consecutive years and no member may be elected or appointed to
8 serve an additional, nonconsecutive term until each eligible
9 individual in the category from which that member was elected or
10 appointed has been provided the opportunity to serve on the
11 committee. An institution may not have a majority of the
12 institution committee members.

13 (f) The Compensation Planning and Review Committee has powers
14 and duties which include, but are not limited to, the following:

15 (1) Making annual recommendations for revisions in the system
16 compensation plan, based on existing economic, budgetary and fiscal
17 conditions or on market study data.

18 (2) Overseeing the five-year external market salary study;

19 (3) Overseeing the annual internal market review;

20 (4) Meeting at least annually with the Job Classification
21 Committee to discuss benchmark jobs to be included in salary
22 surveys, market "hot jobs" that may require a temporary salary
23 adjustment, results of job family reviews, and assessment of current
24 job titles within the classification system for market matches and

1 other issues as the two committee chairs determine to be
2 appropriate; and

3 (5) Performing other duties assigned by the commission and
4 council or necessary or expedient to maintain an effective
5 classification and compensation system.

6 (g) The commission and council may allow the committee to
7 collapse the three lowest pay grades into a single pay grade and
8 provide for employees to be paid at rates appropriate to the highest
9 of the three lowest pay grades.

10 **§18B-9A-6. Salary structure and salary schedules.**

11 (a) The commission and council shall maintain a market salary
12 structure and minimum salary schedules and ensure that all
13 organizations under their respective jurisdictions adhere to state
14 and federal laws and duly promulgated and adopted organization
15 rules.

16 (b) The commission and council may not delegate any of the
17 following duties to the Compensation Planning and Review Committee
18 or the Job Classification Committee:

19 (1) Approval of a classification and compensation rule;

20 (2) Approval of the job evaluation plan;

21 (3) Approval of the annual market salary schedule; or

22 (4) Approval of the annual minimum salary schedule;

23 (c) The commission and council jointly shall develop and
24 maintain a market salary structure. The market salary structure

1 serves as the basis for the following activities:

2 (1) Evaluating compensation of classified employees in relation
3 to appropriate external markets; and

4 (2) Developing the minimum salary schedules to be adopted by
5 the commission and council.

6 (d) The market salary structure shall meet the following
7 criteria:

8 (1) Sets forth the number of pay grades and steps to be
9 included in the structure;

10 (2) Includes a midpoint value for each pay grade which
11 represents the average salary of jobs in that pay grade. The
12 commission and council may choose a midpoint value that is not based
13 exclusively on market salary data; and

14 (3) Includes minimum and maximum step values based on an
15 established range spread, as well as values for other steps in the
16 salary structure.

17 (e) The commission and council jointly shall contract with an
18 external vendor to conduct a classified employee market salary study
19 at least once within each five-year period. At the conclusion of
20 the study, the commission and council, in consultation with the
21 Compensation Planning and Review Committee, may take any combination
22 of the following actions:

23 (1) Adjust the number of pay grades and the point values
24 necessary for a job to be assigned to a particular pay grade;

1 (2) Adjust the midpoint differentials between pay grades better
2 to reflect market conditions; or

3 (3) Adjust the range spread for any pay grade.

4 (f) The commission and council jointly may perform an annual
5 review of market salary data to determine how salaries have changed
6 in the external market. Based on data collected, the commission and
7 council jointly in consultation with the Compensation Planning and
8 Review Committee, shall adjust the market salary structure, if
9 changes are supported by the data. In the absence of a market
10 salary study conducted by an external vendor, the commission and
11 council may not adjust the midpoint differentials between pay grades
12 unless required to do so by a change in minimum wage or other laws
13 and may not adjust the range spread for any pay grade.

14 (g) Annually, the commission and council may approve a minimum
15 salary schedule that sets forth a compensation level for each step
16 and pay grade below which no organization employee may be paid.

17 (1) The minimum salary floor for each pay grade and step on the
18 minimum salary schedule is determined by applying the percentage
19 fixed by commission and council rule promulgated pursuant to section
20 seven of this article to the annual market salary data. The
21 commission and council also shall consider the minimum wage and
22 other laws that ensure that employees earn a living wage and shall
23 maintain a salary structure which ensures that the average salary
24 of each class of employees meets relative market equity among

1 employee classes. The commission and council may take into
2 consideration other factors they consider appropriate.

3 (2) The salary of an employee working fewer than thirty-seven
4 and one-half hours per week shall be prorated.

5 (h) The organization rule promulgated pursuant to subsection
6 (d), section seven of this article may provide for differential pay
7 for certain employees who work different shifts, weekends, or
8 holidays.

9 **§18B-9A-7. Classification and compensation rules required;**
10 **emergency rule authorized.**

11 (a) Notwithstanding any provision of law to the contrary, the
12 commission and council jointly shall design, develop, implement and
13 administer the personnel system of classification and compensation
14 pursuant to this article and articles seven, eight and nine of this
15 chapter. In developing and designing the system, they shall give
16 careful consideration to the recommendations and supporting
17 documentation contained in the *Final Report to the Select Committee*
18 *on Higher Education Personnel*, prepared pursuant to section
19 thirteen, article one-b of this chapter, which was received and
20 approved by the Select Committee on January 11, 2010.

21 (b) *Classification and compensation system rule.* --

22 By November 1, 2011, the commission and council shall propose
23 a joint rule or rules for legislative approval in accordance with

1 article three-a, chapter twenty-nine-a of this code to implement the
2 provisions of this article and articles seven, eight and nine of
3 this chapter. The rule shall establish a classification and
4 compensation system that incorporates best human resources practices
5 and takes into consideration the recommendations of the Legislative
6 Select Committee on Higher Education Personnel. At a minimum, the
7 system rule shall address the areas of organization accountability,
8 employee classification and compensation, performance evaluation and
9 development of organization rules.

10 (1) *Organization accountability.* --

11 The system rule shall provide a procedure for correcting
12 deficiencies identified in the human resources audits conducted
13 pursuant to section nine, article seven of this chapter. The
14 procedure shall include, but is not limited to, the following
15 provisions:

16 (A) Specifying a reasonable time for organizations to correct
17 deficiencies uncovered by an audit;

18 (B) Applying sanctions when major deficiencies are not
19 corrected within the allotted time:

20 (i) For purposes of this subsection, a major deficiency means
21 an organization has failed to comply with federal or state law or
22 with personnel rules of the commission and council.

23 (ii) When a major deficiency is identified, the commission or
24 council, as appropriate, shall notify the governing board of the

1 institution in writing, giving particulars of the deficiency and
2 outlining steps the governing board is required to take to correct
3 the deficiency.

4 (iii) The governing board shall correct the major deficiency
5 within four months and shall notify the commission or council, as
6 appropriate, when the deficiency has been corrected.

7 (iv) If the governing boards fail to correct the major
8 deficiency or fails to notify the commission or council, as
9 appropriate, that the deficiency has been corrected within a period
10 of four months from the time the governing board receives
11 notification, the commission or council shall apply sanctions as
12 specified:

13 (I) A formal reprimand shall be placed in the personnel file
14 of each key administrator who shares responsibility and has
15 operational authority in the area of the identified deficiency.

16 (II) Other sanctions may include, but are not limited to,
17 suspending new hiring by the organization and prohibiting
18 compensation increases for key administrators who have authority
19 over the areas of major deficiency until the identified deficiencies
20 are corrected.

21 (C) Certifying that an organization has achieved full funding
22 of the temporary annual classified employee salary schedule or is
23 making appropriate progress toward achieving full funding pursuant
24 to section three, article nine of this chapter.

1 (2) Employee classification and compensation. -- The system
2 rule shall establish a classification and compensation system to
3 accomplish the following objectives:

4 (A) Moving classified employees through the classification
5 system based on performance and other objective, measurable factors
6 including education and experience above position requirements and
7 years of experience at the pay grade;

8 (B) Achieving and maintaining appropriate levels of employee
9 dispersion across steps;

10 (C) Assigning each current employee to an initial step for his
11 or her pay grade that is closest to and exceeds his or her current
12 salary regardless of previous education, experience or performance.
13 The rule shall provide that the salary of a current employee may not
14 be reduced by a job reclassification, a modification of the market
15 salary schedule, or other conditions that the commission and the
16 council consider appropriate and reasonable;

17 (D) Establishing a job worth hierarchy and identifying the
18 factors to be used to classify jobs and their relative values and
19 determining the number of points that are necessary to assign a job
20 to a particular pay grade;

21 (E) Establishing an objective standard to be used in
22 determining when a job description or a position description is up-
23 to-date;

24 (F) Providing a procedure whereby a classified employee or a

1 supervisor who believes that changes in the job duties and
2 responsibilities of the employee justify a position review may
3 request that a review be done at any time;

4 (G) Specifying the acceptable period that may elapse between
5 the time when an organization receives a formal request for a
6 position review and the time when the review is completed. An
7 organization that fails to complete a review within the specified
8 time shall provide the employee back pay from the date the request
9 for review was received if the review, when completed, produces a
10 reclassification of the position into a job in a higher pay grade;

11 (H) Providing a procedure by which employees may file appeals
12 of job classification decisions for review by the Job Classification
13 Committee prior to filing a formal grievance. The committee shall
14 render a decision within sixty days of the date the appeal is filed
15 with the commission or the council; and

16 (I) Providing for recommendations from the Compensation
17 Planning and Review Committee and the Job Classification Committee
18 to be considered by the commission and the council and to be
19 included in the legislative reporting process pursuant to section
20 eight, article seven of this chapter.

21 (3) Performance evaluations. -- The system rule shall provide
22 for developing and implementing a consistent, objective performance
23 evaluation model and shall mandate that training in conducting
24 performance evaluations be provided for all organization personnel

1 who hold supervisory positions.

2 (c) Emergency rule. --

3 (1) The Legislature hereby finds that an emergency exists and,
4 therefore, the commission and council shall propose a joint
5 emergency rule or rules by November 1, 2013, in accordance with
6 article three-a, chapter twenty-nine-a of this code to implement the
7 provisions of this article and articles seven, eight and nine of
8 this chapter.

9 (2) The commission and council shall file the emergency rule
10 or rules with the Legislative Oversight Commission on Education
11 Accountability by the date specified in subdivision (1) of this
12 subsection and may not implement the emergency rule or rules without
13 prior approval.

14 (d) Organization rules. --

15 (1) Each organization shall promulgate and adopt a rule or
16 rules in accordance with the provisions of section six, article one
17 of this chapter to implement requirements contained in the
18 classification and compensation system rule or rules of the
19 commission and council. The commission and council shall provide
20 a model personnel rule for the organizations under their
21 jurisdiction and shall provide technical assistance in rulemaking
22 as requested.

23 (2) The organization rule shall be adopted within six months
24 of the effective date of any change in statute or rules, unless a

1 different compliance date is specified within the statute or rule
2 containing the requirements or mandate.

3 (3) An organization may not adopt a rule under this section
4 until it has consulted with the appropriate employee class affected
5 by the rule's provisions.

6 (4) If an organization fails to adopt a rule or rules as
7 mandated by this subsection, the commission and council may prohibit
8 it from applying any flexibility or discretionary provision relating
9 to human resources contained in statute or in a commission or
10 council rule until the rule requirements have been met.

11 (5) Additional flexibility or areas of operational discretion
12 identified in the system rule or rules may be exercised only by an
13 organization which meets the following requirements:

14 (A) Receives certification from the commission or council, as
15 appropriate, that the organization has achieved full funding of the
16 temporary salary schedule or is making appropriate progress toward
17 achieving full funding pursuant to section three, article nine of
18 this chapter;

19 (B) Promulgates a comprehensive classification and compensation
20 rule as required by this section;

21 (C) Receives approval of the classification and compensation
22 rule from the appropriate chancellor in accordance with this
23 section; and

24 (D) Adopts the rule by vote of the organization's governing

1 board.

2 (6) Notwithstanding any provision of this code to the contrary,
3 each chancellor, or his or her designee, has the authority and the
4 duty to review any classification and compensation rule promulgated
5 by an organization under his or her jurisdiction and to recommend
6 changes to the rule to bring it into compliance with state and
7 federal law, commission and council rules or legislative, commission
8 and council intent. Each chancellor may reject or disapprove any
9 rule, in whole or in part, if he or she determines that it is not
10 in compliance with law or rule or if it is inconsistent with
11 legislative, commission and council intent.

12 **§18B-9A-8. Implementation of classification and compensation**
13 **system.**

14 (a) Sweeping cultural changes are needed to implement the
15 recommendations of the Select Committee on Higher Education
16 Personnel and the provisions of this article and articles seven,
17 eight and nine of this code. These kinds of changes require
18 dedication and cooperation from all employee classes across the two
19 systems of public higher education, the commission, council and
20 state policymakers. The primary responsibility for implementation,
21 however, rests with the commission and the council who shall provide
22 leadership and assistance to the human resources professionals
23 within each organization to bring about the changes successfully.

24 (b) The implementation process shall be carried out in

1 incremental steps, some of which may occur simultaneously. The
2 steps include the following:

3 (1) Communicating with organization employees and
4 administrators to acquaint them with the guiding principles of the
5 classification and compensation system. The principles which
6 undergird the policy changes are designed to promote fairness,
7 accountability, credibility, transparency and a systematic approach
8 to progress (FACTS for Higher Education). The discussion shall
9 explain the origin of changes in law and policy and show how these
10 are the result of four years of study culminating in the findings
11 and recommendations contained in the *Final Report to the Select*
12 *Committee on Higher Education Personnel* (January 11, 2010).

13 (2) Seeking out credentialed, experienced human resources
14 professionals to provide staff support to the commission, council
15 and organizations pursuant to section two-a, article four of this
16 chapter who are committed to creating a culture of constant
17 improvement in a complex and rapidly changing environment. These
18 professionals are catalysts to promote the Fair, Accountable,
19 Credible, Transparent, and Systematic principles and to serve the
20 organizations by assisting them in developing and maintaining best
21 human resources practices.

22 (3) Conducting an audit of the human resources function at each
23 organization pursuant to section nine, article seven of this chapter
24 to identify best practices and areas of deficiency.

1 (4) Developing and implementing employee training and
2 professional development pursuant to section six, article seven of
3 this chapter to assist organization professionals in applying the
4 Fair, Accountable, Credible, Transparent, and Systematic principles
5 to all human resources functions.

6 (5) Preparing a request for a proposal (RFP) for a human
7 resources information system capable of meeting a wide range of data
8 requirements to support personnel and policy initiatives.

9 (6) Establishing the Compensation Planning and Review Committee
10 pursuant to section five of article and the Job Classification
11 Committee pursuant to section four of this article whose members
12 participate and represent a broad range of higher education
13 interests in the decision and policy-making process.

14 (7) Providing data throughout the implementation process to the
15 Select Committee on Higher Education Personnel or the Legislative
16 Oversight Commission on Education Accountability to inform state
17 policy makers of progress and to provide a forum for further
18 discussion of higher education personnel issues and employee
19 concerns.

NOTE: The purpose of this bill is to clarify language about the duties and responsibilities of the Higher Education Policy Commission. Adding duties and the position of Vice Chancellor for Human Resources to the Higher Education Policy Commission. Rewriting sections dealing with compensation, tenure and pay of personnel with higher education institutions.

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

§18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12; §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6; §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 have been completely rewritten; therefore, it has been completely underscored.

§18B-4-2a, §18B-7-13, §18B-7-14, §18B-7-15, §18B-7-16, §18-8-2 are new and article 9A is new; therefore, it has been completely underscored.