

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 330**

(By Senators Plymale, Wells, Jenkins, Foster,  
Browning, Stollings and Beach)

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[Originating in the Committee on Education;  
reported February 9, 2011.]

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A BILL to repeal §18-13-1 of the Code of West Virginia, 1931, as amended; to repeal §18-23-4a of said code; 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 §12-1-12d of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-4 and §18B-1B-5 of said code; to amend and reenact §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code; to amend and reenact §18B-2B-3 of said code; to amend and reenact §18B-3-1, §18B-3-3 and §18B-3-4 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-5-9 of said code; 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 new section, designated §18B-8-2; to amend and reenact §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; to amend said code by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8; to amend and reenact §18B-10-1 of said code; and to amend and reenact §18B-19-10 of said code, all relating to public higher education personnel generally; state organizations of higher education; public higher education governance; repealing sunset provision for pilot investment program for Marshall University and West Virginia University; extending authority to increase certain types of investment under certain circumstances; specifying and clarifying rule-making procedures; specifying certain powers and duties of certain higher education organizations;

requiring certain governing boards to reach certain graduation rates by certain date; establishing classification and compensation for certain employees; providing legislative purposes and intent; providing certain definitions; requiring creation of certain professional staff positions; setting forth minimum qualifications and specifying duties; requiring organization rulemaking; authorizing certain supplemental retirement, health and welfare benefit plans for certain employees; providing for certain employer and employee matches; authorizing employee payroll deductions; requiring establishment of continuing education and professional development programs for certain employees; setting forth certain employment practices; requiring certain periodic reports; specifying data to be included in reports and designating report due dates; providing certain exceptions to report due dates; requiring periodic reviews of human resources functions at certain higher education organizations; setting forth purposes of reviews; specifying review criteria and designating completion dates; requiring prior notice of reviews and setting forth certain exceptions; authorizing compensatory time off for certain employees in certain instances; setting forth conditions; defining “nonclassified” employees; limiting percentage of

employees designated nonclassified and providing certain exceptions; establishing formula for calculating percentage; providing effective date for meeting percentage limits and requiring compliance reports; authorizing certain employment by mutual agreement; setting forth terms, conditions and applicability of agreements; requiring probationary period for certain employees; authorizing catastrophic leave banks and leave transfer for certain employees; setting forth terms and conditions for participation; codifying certain current practices; authorizing merit salary increases for certain employees under certain conditions; requiring study of certain employment practices; requiring report and specifying data and report due date; requiring faculty salary rules and providing for salary increases in certain instances; authorizing sabbatical leaves for certain professional personnel; specifying terms and conditions for participation; maintaining certain rights and benefits during leaves of absence under certain circumstances; requiring definition of certain terms; requiring notice of employment decisions to probationary faculty members by certain date and providing for hearings in certain instances; stating legislative intent regarding funding for certain employee salary schedules; specifying applicability of certain

statutes; establishing certain terms and conditions and providing certain exceptions; providing formulas for making certain salary calculations; requiring certification of certain higher education organizations relating to certain salary funding requirements; specifying applicability of certain rules; requiring review and approval process for certain rules and specifying responsibilities of certain professional personnel relating to rulemaking; providing for funding certain salary schedules; specifying certain consequences and sanctions and providing exceptions; providing short title; requiring maintenance of uniform job classification system; establishing job classification committee and specifying organization, powers and duties; assigning certain other powers and duties relating to job classification; establishing compensation planning and review committee and specifying organization, powers and duties; providing for establishment of market salary structures and minimum salary schedules; requiring periodic updates and specifying certain other related powers and duties; providing for periodic market salary studies and specifying application of study findings; requiring certain salary comparisons and establishing limit on variations of average salaries among employee classes; specifying authority and duty of Higher

Education Policy Commission and Council for Community and Technical College Education over classification and compensation system; requiring promulgation of certain personnel rules by certain date; authorizing emergency rules with prior approval; establishing parameters for rules; specifying mechanisms for correcting identified deficiencies and requiring and authorizing certain sanctions in certain instances; providing for hearing employee appeals; requiring performance evaluations for certain employees; requiring certain training for supervisory personnel; establishing terms and conditions for exercising certain operational flexibilities for governing boards; establishing goals for implementing certain statutes and rules; fixing certain implementation responsibilities; providing for review and approval of governing boards' requests for tuition and fee increases greater than set amounts; removing caps on increases in tuition and fees; clarifying procedure for rental, lease and sale of property; making technical corrections; and deleting obsolete language.

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

That §18-13-1 of the Code of West Virginia, 1931, as amended, be repealed; that §18-23-4a of said code be repealed; that §18B-8-3a of said code be repealed; that §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 be repealed; that §12-1-12d of said code be amended and reenacted; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-4 and §18B-1B-5 of said code be amended and reenacted; that §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code be amended and reenacted; that §18B-2B-3 of said code be amended and reenacted; that §18B-3-1, §18B-3-3 and §18B-3-4 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-4-2a; that §18B-5-9 of said code be amended and reenacted; that §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 be amended and reenacted; that said code be amended by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; that §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-8-2; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8; that §18B-10-1

of said code be amended and reenacted; and that §18B-19-10 of said code be amended and reenacted, all to read as follows:

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

**ARTICLE 1. STATE DEPOSITORIES.**

**§12-1-12d. Investments by Marshall University and West Virginia University.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, the governing boards of Marshall University and  
3 West Virginia University each may invest certain funds with  
4 its respective nonprofit foundation that has been established  
5 to receive contributions exclusively for that university and  
6 which exists on January 1, 2005. Any such investment is  
7 subject to the limitations of this section.

8 (b) A governing board, through its chief financial officer  
9 may enter into agreements, approved as to form by the State  
10 Treasurer, for the investment by its foundation of certain  
11 funds subject to their administration. Any interest or  
12 earnings on the moneys invested is retained by the investing  
13 university.

14 (c) Moneys of a university that may be invested with its  
15 foundation pursuant to this section are those subject to the  
16 administrative control of the university that are collected



17 under an act of the Legislature for specific purposes and do  
18 not include any funds made available to the university from  
19 the state General Revenue Fund or the funds established in  
20 sections eighteen or eighteen-a, article twenty-two, chapter  
21 twenty-nine of this code. Moneys permitted to be invested  
22 under this section may be aggregated in an investment fund  
23 for investment purposes.

24 (d) Of the moneys authorized for investment by this  
25 section, Marshall University and West Virginia University  
26 each, respectively, may have invested with its foundation at  
27 any time not more than the greater of:

28 (1) \$18 million for Marshall University and \$25 million for  
29 West Virginia University; or

30 (2) Sixty-five percent of its unrestricted net assets as  
31 presented in the statement of net assets for the fiscal year  
32 end audited financial reports.

33 (3) Notwithstanding subdivisions (1) and (2) of this subsec-  
34 tion, with the approval of the Higher Education Policy  
35 Commission, Marshall University may increase the amount  
36 invested to \$30 million and West Virginia University may  
37 increase the amount invested to \$40 million.

38 (e) Investments by foundations that are authorized under  
39 this section shall be made in accordance with and subject to  
40 the provisions of the Uniform Prudent Investor Act codified  
41 as article six-c, chapter forty-four of this code. As part of its  
42 fiduciary responsibilities, each governing board shall  
43 establish investment policies in accordance with the Uniform  
44 Prudent Investor Act for those moneys invested with its  
45 foundation. The governing board shall review, establish and  
46 modify, if necessary, the investment objectives as incorpo-  
47 rated in its investment policies so as to provide for the  
48 financial security of the moneys invested with its foundation.  
49 The governing boards shall give consideration to the follow-  
50 ing:

- 51 (1) Preservation of capital;
- 52 (2) Diversification;
- 53 (3) Risk tolerance;
- 54 (4) Rate of return;
- 55 (5) Stability;
- 56 (6) Turnover;
- 57 (7) Liquidity; and
- 58 (8) Reasonable cost of fees.

59 (f) A governing board shall report annually by December  
60 31 to the Governor and to the Joint Committee on Govern-  
61 ment and Finance on the performance of investments  
62 managed by its foundation pursuant to this section.

63 ~~(g) The authority of a governing board to invest moneys~~  
64 ~~with its foundation pursuant to this section expires on July~~  
65 ~~1, 2011.~~

66 ~~(h)~~ (g) The amendments to this section in the second  
67 extraordinary session of the Legislature in 2010 shall apply  
68 retroactively so that the authority granted by this section  
69 shall be construed as if that authority did not expire on July  
70 1, 2010.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 1. GOVERNANCE.**

#### **§18B-1-2. Definitions.**

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

4 “Administratively linked community and technical  
5 college” means a state institution of higher education  
6 delivering community and technical college education and  
7 programs which has maintained a contractual agreement to

8 receive essential services from another accredited state  
9 institution of higher education prior to July 1, 2008;

10 “Advanced technology center” means a facility established  
11 under the direction of an independent community and  
12 technical college or the council for the purpose of imple-  
13 menting and delivering education and training programs for  
14 high-skill, high-performance Twenty-first Century  
15 workplaces;

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

22 “Broker” or “brokering” means serving as an agent on  
23 behalf of students, employers, communities or responsibility  
24 areas to obtain education services not offered at that institu-  
25 tion. These services include courses, degree programs or  
26 other services contracted through an agreement with a  
27 provider of education services either in-state or out-of-state;

28 “Chancellor” means the Chancellor for Higher Education  
29 where the context refers to a function of the Higher Educa-

30 tion Policy Commission. “Chancellor” means Chancellor for  
31 Community and Technical College Education where the  
32 context refers to a function of the West Virginia Council for  
33 Community and Technical College Education;

34 “Chancellor for Community and Technical College  
35 Education” means the chief executive officer of the West  
36 Virginia Council for Community and Technical College  
37 Education employed pursuant to section three, article two-b  
38 of this chapter;

39 “Chancellor for Higher Education” means the chief  
40 executive officer of the Higher Education Policy Commission  
41 employed pursuant to section five, article one-b of this  
42 chapter;

43 “Collaboration” means entering into an agreement with  
44 one or more providers of education services in order to  
45 enhance the scope, quality or efficiency of education ser-  
46 vices;

47 “Community and technical college”, in the singular or  
48 plural, means the free-standing community and technical  
49 colleges and other state institutions of higher education  
50 which deliver community and technical college education.  
51 This definition includes Blue Ridge Community and Techni-

52 cal College, Bridgemont Community and Technical College,  
53 Eastern West Virginia Community and Technical College,  
54 Kanawha Valley Community and Technical College,  
55 Mountwest Community and Technical College, New River  
56 Community and Technical College, Pierpont Community and  
57 Technical College, Southern West Virginia Community and  
58 Technical College, West Virginia Northern Community and  
59 Technical College and West Virginia University at  
60 Parkersburg;

61 “Community and technical college education” means the  
62 programs, faculty, administration and funding associated  
63 with the delivery of community and technical college  
64 education programs;

65 “Community and technical college education program”  
66 means any college-level course or program beyond the high  
67 school level provided through a public institution of higher  
68 education resulting in or which may result in a two-year  
69 associate degree award including an associate of arts, an  
70 associate of science and an associate of applied science;  
71 certificate programs and skill sets; developmental education;  
72 continuing education; collegiate credit and noncredit  
73 workforce development programs; and transfer and bacca-

74 laureate parallel programs. All programs are under the  
75 jurisdiction of the council. Any reference to “post-secondary  
76 vocational education programs” means community and  
77 technical college education programs as defined in this  
78 subsection;

79 “Council” means the West Virginia Council for Community  
80 and Technical College Education created by article two-b of  
81 this chapter;

82 “Dual credit course” or “dual enrollment course” means a  
83 credit-bearing college-level course offered in a high school  
84 by a state institution of higher education for high school  
85 students in which the students are concurrently enrolled and  
86 receiving credit at the secondary level.

87 “Essential conditions” means those conditions which shall  
88 be met by community and technical colleges as provided in  
89 section three, article three-c of this chapter;

90 “Free-standing community and technical colleges” means  
91 Southern West Virginia Community and Technical College,  
92 West Virginia Northern Community and Technical College,  
93 and Eastern West Virginia Community and Technical  
94 College, which may not be operated as branches or off-

95 campus locations of any other state institution of higher  
96 education;

97 “Governing boards” or “boards” means the institutional  
98 boards of Governors created by section one, article two-a of  
99 this chapter;

100 ~~“Higher education institution” means any institution as~~  
101 ~~defined by Sections 401(f), (g) and (h) of the federal Higher~~  
102 ~~Education Facilities Act of 1963, as amended;~~

103 “Higher Education Policy Commission”, “Policy Commis-  
104 sion” or “Commission” means the commission created by  
105 section one, article one-b of this chapter;

106 “Independent community and technical college” means a  
107 state institution of higher education under the jurisdiction of  
108 the council which is independently accredited or seeking  
109 independent accreditation, is governed by its own independ-  
110 ent governing board, and may not be operated as a branch or  
111 off-campus location of any other state institution of higher  
112 education. This definition includes Blue Ridge Community  
113 and Technical College, Bridgemont Community and Techni-  
114 cal College, Eastern West Virginia Community and Technical  
115 College, Kanawha Valley Community and Technical College,  
116 Mountwest Community and Technical College, New River



117 Community and Technical College, Pierpont Community and  
118 Technical College, Southern West Virginia Community and  
119 Technical College, West Virginia Northern Community and  
120 Technical College and West Virginia University at  
121 Parkersburg; and

122 “Institutional compact” means the compact between the  
123 commission or council and a state institution of higher  
124 education under its jurisdiction, as described in section  
125 seven, article one-d of this chapter;

126 “Institutional operating budget” or “operating budget”  
127 means for any fiscal year an institution’s total unrestricted  
128 education and general funding from all sources, including,  
129 but not limited to, tuition and fees and legislative appropria-  
130 tion, and any adjustments to that funding as approved by the  
131 commission or council based on comparisons with peer  
132 institutions or to reflect consistent components of peer  
133 operating budgets;

134 “Peer institutions”, “peer group” or “peers” means public  
135 institutions of higher education used for comparison pur-  
136 poses and selected by the commission pursuant to section  
137 three, article one-a of this chapter;

138 “Rule” or “rules” means a regulation, standard, policy or  
139 interpretation of general application and future effect;

140 “Sponsoring institution” means a state institution of  
141 higher education that maintained an administrative link to  
142 a community and technical college providing essential  
143 services prior to July 1, 2008. This definition includes  
144 institutions whose governing boards had under their juris-  
145 diction a community and technical college, regional campus  
146 or a division delivering community and technical college  
147 education and programs;

148 “State college” means Bluefield State College, Concord  
149 University, Fairmont State University, Glenville State  
150 College, Shepherd University, West Liberty University or  
151 West Virginia State University;

152 “State institution of higher education” means any univer-  
153 sity, college or community and technical college under the  
154 jurisdiction of a governing board as that term is defined in  
155 this section;

156 “Statewide network of independently accredited commu-  
157 nity and technical colleges” or “community and technical  
158 college network” means the state institutions of higher  
159 education under the jurisdiction of the West Virginia Council

160 for Community and Technical College Education which are  
161 independently accredited or are seeking independent  
162 accreditation by the regional accrediting agency, each  
163 governed by its own independent governing board, and each  
164 having a core mission of providing affordable access to and  
165 delivering high quality community and technical education  
166 in every region of the state;

167 “Vice Chancellor for Administration” means the person  
168 employed in accordance with section two, article four of this  
169 chapter. Any reference in this chapter or chapter eighteen-c  
170 of this code to “Senior Administrator” means Vice Chancel-  
171 lor for Administration;

172 “Vice Chancellor for Human Resources” means the person  
173 employed by the commission and the council jointly pursuant  
174 to section two-a, article four of this chapter. The person  
175 employed as senior director of human resources by the  
176 commission on January 1, 2011, becomes the Vice Chancellor  
177 for Human Resources on the effective date of this section;  
178 and

179 “West Virginia Consortium for Undergraduate Research  
180 and Engineering” or “West Virginia CURE” means the

181 collaborative planning group established by article one-c of  
182 this chapter.

**§18B-1-6. Rulemaking.**

1 (a) The commission is hereby empowered to promulgate,  
2 adopt, amend or repeal rules, in accordance with ~~the provi-~~  
3 ~~sions of~~ article three-a, chapter twenty-nine-a of this code,  
4 subject to ~~the provisions of~~ section three of this article.

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

12 (c) As it relates to the authority granted to governing  
13 boards of state institutions of higher education to promul-  
14 gate, adopt, amend or repeal any rule under ~~the provisions of~~  
15 this code:

16 (1) "Rule" means any regulation, guideline, directive,  
17 standard, statement of policy or interpretation of general  
18 application which has institution-wide effect or which  
19 affects the rights, privileges or interests of employees,

20 students or citizens. Any regulation, guideline, directive,  
21 standard, statement of policy or interpretation of general  
22 application that meets this definition is a rule for the  
23 purposes of this section.

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

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

40 (A) A procedure to ensure that public notice is given and  
41 that the right of interested parties to have a fair and ade-

42 quate opportunity to respond is protected, including provid-  
43 ing for a thirty-day public comment period prior to final  
44 adoption of a rule;

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

48 (C) A procedure to maximize Internet access to all pro-  
49 posed and approved rules, guidelines and other policy  
50 statements to the extent technically and financially feasible;  
51 and

52 (D) A procedure for the governing board to follow in  
53 submitting its rules for review and approval to the commis-  
54 sion and/or council, as appropriate, except the following  
55 conditions apply for the governing boards of Marshall  
56 University and West Virginia University:

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

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

62 (iii) If a governing board receives comments or suggestions  
63 on a rule from the commission, it shall record these as part

64 of the minute record. The rule is not effective and may not be  
65 implemented until the governing board holds a meeting and  
66 places on the meeting agenda the comments it has received  
67 from the commission.

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

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

77 (f) ~~The governing boards of Marshall University and West~~  
78 ~~Virginia University, respectively,~~ shall promulgate and adopt  
79 any rule which they are required to adopt by this chapter or  
80 chapter eighteen-c of this code no later than ~~the first day of~~  
81 ~~July 1, two thousand five~~ July 1, 2011 unless a later date is  
82 specified. On and after this date:

83 (1) Any rule of ~~either~~ a governing board which meets the  
84 definition set out in subsection (c) of this section and which  
85 has not been promulgated and adopted by formal vote of the

86 appropriate governing board is void and may not be en-  
87 forced;

88 (2) Any authority granted by this code which inherently  
89 requires the governing board to promulgate and adopt a rule  
90 is void until the governing board complies with ~~the provi-~~  
91 ~~sions of~~ this section.

92 (g) Within thirty days of the adoption of a rule, including  
93 repeal or amendment of an existing rule, ~~the~~ and before the  
94 change is implemented, a governing boards of Marshall  
95 University and West Virginia University, respectively, board  
96 shall furnish to the commission or the council, as appropri-  
97 ate, a copy of each rule which it has been formally adopted  
98 to the commission or the council, respectively, for review and  
99 approval, except the governing boards of Marshall Univer-  
100 sity and West Virginia University are subject to subsection  
101 (c) of this section.

102 (h) ~~Not later than~~ Annually, by October 1, ~~2005,~~ and  
103 ~~annually thereafter,~~ each governing board of a state institu-  
104 ~~tion of higher education~~ shall file with the commission or the  
105 council, as appropriate, a list of all ~~institutional~~ rules that  
106 were in effect for that institution on July 1 of that year,  
107 including the most recent date on which each rule was



108 considered and adopted, amended or repealed by the govern-  
 109 ing board. For all rules adopted, amended or repealed after  
 110 the effective date of this section, the list shall include a  
 111 statement by the chair of the governing board certifying that  
 112 the governing board has complied with ~~the provisions of this~~  
 113 section when each listed rule was promulgated and adopted.

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

**§18B-1B-4. Powers and duties of Higher Education Policy Com-  
 mission.**

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

14 (1) Develop, oversee and advance the public policy agenda  
15 pursuant to ~~section one, article one-a~~ article one-d of this  
16 chapter to address major challenges facing the state, includ-  
17 ing, but not limited to, the following:

18 (A) The goals, ~~and objectives and priorities found~~ estab-  
19 lished in ~~section one-a, article one~~ of this chapter ~~and~~  
20 including specifically those goals, ~~and objectives and~~  
21 priorities pertaining to the compacts created pursuant to  
22 section ~~two seven,~~ article one-a one-d of this chapter; ~~and to~~  
23 ~~develop and implement~~

24 (B) Development and implementation of the master plan  
25 described in section ~~nine of this five,~~ article one-d of this  
26 chapter for the purpose of accomplishing the mandates of  
27 this section;

28 (2) Develop, oversee and advance the promulgation and  
29 implementation ~~jointly with the council~~ of a financing ~~policy~~  
30 rule for state institutions of higher education ~~in West~~  
31 ~~Virginia~~ under its jurisdiction. The ~~policy~~ rule shall meet the  
32 following criteria:

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

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

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

43 ~~(D) Incorporate the plan for strategic funding to strengthen~~  
44 ~~capacity for support of community and technical college~~  
45 ~~education established by the West Virginia Council for~~  
46 ~~Community and Technical College Education pursuant to the~~  
47 ~~provisions of section six, article two-b of this chapter;~~

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

50 (A) Developing, building public consensus around and  
51 sustaining attention to a long-range public policy agenda. In  
52 developing the agenda, the commission and council shall  
53 seek input from the Legislature and the Governor and  
54 specifically from the state Board of Education and local  
55 school districts in order to create the necessary linkages to  
56 assure smooth, effective and seamless movement of students  
57 through the public education and post-secondary education

58 systems and to ensure that the needs of public school courses  
59 and programs can be fulfilled by the graduates produced and  
60 the programs offered;

61 (B) Ensuring that the governing boards carry out their duty  
62 effectively to govern the individual institutions of higher  
63 education; and

64 (C) Holding the ~~higher education institutions governing~~  
65 boards and the higher education systems as a whole account-  
66 able for accomplishing their missions and implementing ~~the~~  
67 ~~provisions of the~~ their compacts;

68 (4) Develop and adopt each ~~institutional~~ compact for the  
69 governing boards under its jurisdiction;

70 (5) Review and adopt the annual updates of the institu-  
71 tional compacts;

72 (6) Serve as the accountability point to state policymakers;

73 (A) The Governor for implementation of the public policy  
74 agenda; and

75 (B) The Legislature by maintaining a close working  
76 relationship with the legislative leadership and the Legisla-  
77 tive Oversight Commission on Education Accountability;

78 (7) Jointly with the council, promulgate legislative rules  
79 pursuant to article three-a, chapter twenty-nine-a of this

80 code to fulfill the purposes of section five, article one-a of  
81 this chapter;

82 (8) Establish and implement a peer group for each institu-  
83 tion as described in section three, article one-a of this  
84 chapter;

85 (9) Establish and implement the benchmarks and perfor-  
86 mance indicators necessary to measure institutional ~~achieve-~~  
87 ~~ment towards~~ progress in achieving state policy priorities  
88 and institutional missions pursuant to section ~~two, article~~  
89 ~~one-a~~ seven, article one-d of this chapter;

90 (10) ~~Annually~~ Report to the Legislature and to the Legisla-  
91 tive Oversight Commission on Education Accountability  
92 annually during the January interim ~~meetings~~ meeting  
93 period on a date and at a time and location to be determined  
94 by the President of the Senate and the Speaker of the House  
95 of Delegates. The report shall address at least the following:  
96 (A) The performance of its system of higher education  
97 during the previous fiscal year, including, but not limited to,  
98 progress in meeting ~~goals stated in the compacts and prog-~~  
99 ~~ress of the institutions and the higher education system as a~~  
100 ~~whole in meeting~~ the goals, and objectives and priorities set  
101 forth in section one-a, article one and article one-d of this

102 chapter and in the commission's master plan and institu-  
103 tional compacts;

104 ~~(B) An analysis of enrollment data collected pursuant to~~  
105 ~~section one, article ten of this chapter and recommendations~~  
106 ~~for any changes necessary to assure access to high-quality,~~  
107 ~~high-demand education programs for West Virginia resi-~~  
108 ~~dents;~~

109 ~~(C)~~ (B) The commission's priorities ~~established~~ for new  
110 operating and capital investment investments ~~needs~~ pursuant  
111 ~~to subdivision (11) of this subsection~~ and the justification for  
112 ~~such~~ the priority;

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

117 (11) Establish a formal process for identifying ~~needs for~~  
118 capital ~~investments~~ investment needs and for determining  
119 priorities for these investments for consideration by the  
120 Governor and the Legislature as part of the appropriation  
121 request process pursuant to article nineteen of this chapter.  
122 ~~It is the responsibility of the commission to assure a fair~~  
123 ~~distribution of funds for capital projects between the~~

124 ~~commission and the council. To that end the commission~~  
125 ~~shall take the following steps:~~

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

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

133 ~~(C) Select a minimum of three projects from the list~~  
134 ~~submitted by the council to be included on the ranked list~~  
135 ~~established by the commission. At least one of the three~~  
136 ~~projects selected must come from the top two priorities~~  
137 ~~established by the council;~~

138 ~~(12) Maintain guidelines for institutions to follow concern-~~  
139 ~~ing extensive capital project management except the govern-~~  
140 ~~ing boards of Marshall University and West Virginia Univer-~~  
141 ~~sity are not subject to the provisions of this subdivision as it~~  
142 ~~relates to the state institutions of higher education known as~~  
143 ~~Marshall University and West Virginia University. The~~  
144 ~~guidelines shall provide a process for developing capital~~  
145 ~~projects, including, but not limited to, the notification by an~~

146 ~~institution to the commission of any proposed capital project~~  
147 ~~which has the potential to exceed one million dollars in cost.~~  
148 ~~Such a project may not be pursued by an institution without~~  
149 ~~the approval of the commission. An institution may not~~  
150 ~~participate directly or indirectly with any public or private~~  
151 ~~entity in any capital project which has the potential to~~  
152 ~~exceed one million dollars in cost;~~

153 (12) Develop standards and evaluate governing board  
154 requests for capital project financing in accordance with  
155 article nineteen of this chapter;

156 (13) Ensure that governing boards manage capital projects  
157 and facilities needs effectively, including review and ap-  
158 proval or disapproval of capital projects, in accordance with  
159 article nineteen of this chapter.

160 ~~(13)~~ (14) Acquire legal services as ~~are~~ considered necessary,  
161 including representation of the commission, its ~~institutions,~~  
162 governing boards, employees and officers before any court or  
163 administrative body, notwithstanding any other provision of  
164 this code to the contrary. The counsel may be employed  
165 either on a salaried basis or on a reasonable fee basis. In  
166 addition, the commission may, but is not required to, call



167 upon the Attorney General for legal assistance and represen-  
168 tation as provided by law;

169 ~~(14)~~ (15) Employ a Chancellor for Higher Education  
170 pursuant to section five of this article;

171 ~~(15)~~ (16) Employ other staff as necessary and appropriate  
172 to carry out the duties and responsibilities of the commission  
173 and the council, in accordance with ~~the provisions of~~ article  
174 four of this chapter;

175 ~~(16)~~ (17) Provide suitable offices in Kanawha County for  
176 the chancellor, vice chancellors and other staff;

177 ~~(17)~~ (18) Advise and consent in the appointment of the  
178 presidents of the institutions of higher education under its  
179 jurisdiction pursuant to section six of this article. The role of  
180 the commission in approving an institutional president is to  
181 assure through personal interview that the person selected  
182 understands and is committed to achieving the goals, ~~and~~  
183 objectives and priorities as set forth in the ~~institutional~~  
184 compact, ~~and~~ in section one-a, article one and article one-d  
185 of this chapter;

186 ~~(18)~~ (19) Approve the total compensation package from all  
187 sources for presidents of institutions under its jurisdiction,  
188 as proposed by the governing boards. The governing boards

189 must obtain approval from the commission of the total  
190 compensation package both when institutional presidents  
191 are employed initially and afterward when any change is  
192 made in the amount of the total compensation package;

193 ~~(19)~~ (20) Establish and implement the policy of the state to  
194 assure that parents and students have sufficient information  
195 at the earliest possible age on which to base academic  
196 decisions about what is required for students to be successful  
197 in college, other post-secondary education and careers  
198 related, as far as possible, to results from current assessment  
199 tools in use in West Virginia;

200 ~~(20)~~ (21) Approve and implement a uniform standard  
201 jointly with the council to determine which students shall be  
202 placed in remedial or developmental courses. The standard  
203 shall be aligned with college admission tests and assessment  
204 tools used in West Virginia and shall be applied uniformly by  
205 the governing boards throughout the public higher education  
206 system. The chancellors shall develop a clear, concise  
207 explanation of the standard which they shall communicate  
208 to the state Board of Education and the state superintendent  
209 of Schools;

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

212 (22) Jointly with the council, develop and implement an  
213 oversight plan to manage systemwide technology ~~such as the~~  
214 including, but not limited to, the following:

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

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

223 (C) Notwithstanding any other provision of law or this  
224 code to the contrary, the council, commission and ~~state~~  
225 ~~institutions of higher education~~ governing boards are not  
226 subject to the jurisdiction of the Chief Technology Officer for  
227 any purpose;

228 (23) Establish and implement policies and procedures to  
229 ensure that ~~students~~ a student may transfer and apply  
230 toward the requirements for a bachelor's degree the maxi-  
231 mum number of credits earned at any regionally accredited

232 in-state or out-of-state community and technical college  
233 with as few requirements to repeat courses or to incur  
234 additional costs as ~~is~~ are consistent with sound academic  
235 policy;

236 (24) Establish and implement policies and procedures to  
237 ensure that ~~students~~ a student may transfer and apply  
238 toward the requirements for a degree the maximum number  
239 of credits earned at any regionally accredited in-state or out-  
240 of-state higher education institution with as few require-  
241 ments to repeat courses or to incur additional costs as ~~is~~ are  
242 consistent with sound academic policy;

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

250 (26) Establish and implement policies and programs, in  
251 cooperation with the council and the ~~institutions of higher~~  
252 ~~education~~ governing boards, through which ~~students~~ a  
253 student who ~~have~~ has gained knowledge and skills through

254 employment, participation in education and training at  
255 vocational schools or other education institutions, or  
256 Internet-based education programs, may demonstrate by  
257 competency-based assessment that ~~they have~~ he or she has  
258 the necessary knowledge and skills to be granted academic  
259 credit or advanced placement standing toward the require-  
260 ments of an ~~associate~~ associate's degree or a bachelor's  
261 degree at a state institution of higher education;

262 (27) Seek out and attend regional, national and interna-  
263 tional meetings and forums on education and workforce  
264 development-related topics as, in the commission's discre-  
265 tion, ~~is~~ are critical for the performance of their duties as  
266 members, for the purpose of keeping abreast of education  
267 trends and policies to aid it in developing the policies for this  
268 state to meet the established education goals, ~~and~~ objectives  
269 and priorities pursuant to section one-a, article one and  
270 article one-d of this chapter;

271 (28) ~~Develop, establish~~ Promulgate and implement a rule  
272 for higher education governing boards and institutions to  
273 follow when considering capital projects pursuant to article  
274 nineteen of this chapter; ~~The guidelines shall assure that the~~  
275 ~~governing boards and institutions do not approve or promote~~

276 ~~capital projects involving private sector businesses which~~  
277 ~~would have the effect of reducing property taxes on existing~~  
278 ~~properties or avoiding, in whole or in part, the full amount~~  
279 ~~of taxes which would be due on newly-developed or future~~  
280 ~~properties;~~

281 (29) Consider and submit to the appropriate agencies of the  
282 executive and legislative branches of state government a  
283 ~~budget~~ an appropriation request that reflects recommended  
284 appropriations ~~from for~~ the commission and the ~~institutions~~  
285 governing boards under its jurisdiction. The commission  
286 shall submit as part of its ~~budget proposal~~ appropriation  
287 request the separate recommended ~~appropriations~~ appropri-  
288 ation request it received from the council, both for the  
289 council and for the ~~institutions~~ governing boards under the  
290 council's jurisdiction. The commission annually shall submit  
291 the proposed ~~institutional~~ allocations based on each institu-  
292 tion's progress toward meeting the goals of its ~~institutional~~  
293 compact;

294 (30) The commission ~~has the authority to~~ may assess  
295 institutions under its jurisdiction, including ~~the state~~  
296 ~~institutions of higher education known as Marshall Univer-~~  
297 ~~sity and West Virginia University, for the payment of~~

298 expenses of the commission or for the funding of statewide  
299 higher education services, obligations or initiatives related  
300 to the goals set forth for the provision of public higher  
301 education in the state;

302 (31) Promulgate rules allocating reimbursement of appro-  
303 priations, if made available by the Legislature, to ~~institu-~~  
304 ~~tions of higher education~~ governing boards for qualifying  
305 noncapital expenditures incurred in ~~the provision of~~ provid-  
306 ing services to students with physical, learning or severe  
307 sensory disabilities;

308 (32) Make appointments to boards and commissions where  
309 this code requires appointments from the State College  
310 System Board of Directors or the University of West Virginia  
311 System Board of Trustees which were abolished effective  
312 June 30, 2000, except in those cases where the required  
313 appointment has a specific and direct connection to the  
314 provision of community and technical college education, the  
315 appointment shall be made by the council. Notwithstanding  
316 any provisions of this code to the contrary, the commission  
317 or the council may appoint one of its own members or any  
318 other citizen of the state as its designee. The commission and  
319 council shall appoint the total number of persons in the

320 aggregate required to be appointed by these previous  
321 governing boards;

322 (33) Pursuant to ~~the provisions of~~ article three-a, chapter  
323 twenty-nine-a of this code and section six, article one of this  
324 chapter, promulgate rules ~~as~~ necessary or expedient to fulfill  
325 the purposes of this chapter. The commission and the council  
326 shall promulgate a uniform joint legislative rule for the  
327 ~~purpose~~ purposes of standardizing, as much as possible, the  
328 administration of personnel matters among the state institu-  
329 tions of higher education and implementing the provisions of  
330 articles seven, eight, nine and nine-a of this chapter;

331 (34) Determine when a joint rule among the governing  
332 boards ~~of the institutions~~ under its jurisdiction is necessary  
333 or required by law and, in those instances, in consultation  
334 with the governing boards ~~of all the institutions~~ under its  
335 jurisdiction, promulgate the joint rule;

336 (35) ~~In consultation with the governing boards of Marshall~~  
337 ~~University and West Virginia University, Promulgate and~~  
338 ~~implement a policy rule jointly with the council whereby~~  
339 ~~course credit earned at a community and technical college~~  
340 ~~transfers for program credit at any other state institution of~~



341 higher education and is not limited to fulfilling a general  
342 education requirement;

343 (36) By October 1, 2011, promulgate a joint rule with the  
344 council pursuant to section one, article ten of this chapter,  
345 establishing tuition and fee policy for all institutions of  
346 higher education governing boards under the jurisdiction of  
347 the commission, other than including state institutions of  
348 higher education known as Marshall University and West  
349 Virginia University, which are subject to the provisions of  
350 section one, article ten of this chapter. The rule shall include,  
351 but is not limited to, the following:

352 (A) Comparisons with peer institutions;

353 (B) Differences among institutional missions;

354 (C) Strategies for promoting student access;

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

356 (E) Such other policies as the commission and council  
357 consider appropriate;

358 (37) Implement general disease awareness initiatives to  
359 educate parents and students, particularly dormitory  
360 residents, about meningococcal meningitis; the potentially  
361 life-threatening dangers of contracting the infection;  
362 behaviors and activities that can increase risks; measures

363 that can be taken to prevent contact or infection; and  
364 potential benefits of vaccination. The commission shall  
365 encourage ~~institutions~~ governing boards that provide  
366 medical care to students to provide access to the vaccine for  
367 those who wish to receive it; and

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

374 (A) ~~The commission may not sell, lease, convey or other-~~  
375 ~~wise dispose of any real property without first:~~

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

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

382 (iii) ~~Providing notice to the Joint Committee on Govern-~~  
383 ~~ment and Finance; and~~

384 ~~(B) Any proceeds from the sale, lease, conveyance or other~~  
385 ~~disposal of real property that is used jointly by institutions~~  
386 ~~or for statewide programs under the jurisdiction of the~~  
387 ~~commission or the council shall be transferred to the General~~  
388 ~~Revenue Fund of the state.~~

389 (b) In addition to the powers and duties listed in subsection  
390 (a) of this section, the commission has the following general  
391 powers and duties related to its role in developing, articulat-  
392 ing and overseeing the implementation of the public policy  
393 agenda:

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

397 (2) Policy analysis and research focused on issues affecting  
398 the system as a whole or a geographical region thereof;

399 (3) Development and implementation of institutional  
400 mission definitions, including use of incentive funds to  
401 influence institutional behavior in ways that are consistent  
402 with public priorities;

403 (4) Academic program review and approval for ~~institutions~~  
404 governing boards under its jurisdiction. ~~including~~ The review  
405 and approval includes use of institutional missions as a

406 template to judge the appropriateness of both new and  
407 existing programs and the authority to implement needed  
408 changes.

409 (A) The commission's authority to review and approve  
410 academic programs for either ~~the state institution of higher~~  
411 ~~education known as~~ Marshall University or West Virginia  
412 University is limited to programs that are proposed to be  
413 offered at a new location not presently served by that  
414 institution;

415 (B) The commission shall approve or disapprove proposed  
416 academic degree programs in those instances where approval  
417 is required within ninety days from the date the governing  
418 board makes an official request. The commission may not  
419 withhold approval unreasonably.

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

422 (6) Administration of state and federal student aid pro-  
423 grams under the supervision of the vice chancellor for  
424 administration, including promulgation of ~~any~~ rules neces-  
425 sary to administer those programs;

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

429 (8) ~~Development, establishment and implementation of~~  
430 Developing, establishing and implementing information,  
431 assessment, ~~and~~ accountability and personnel systems,  
432 including ~~maintenance of~~ maintaining statewide data  
433 systems that facilitate long-term planning and accurate  
434 measurement of strategic outcomes and performance indica-  
435 tors;

436 (9) Jointly with the council, ~~developing, establishing~~  
437 promulgating and implementing ~~policies~~ rules for licensing  
438 and oversight for both public and private degree-granting  
439 and nondegree-granting institutions that provide post-  
440 secondary education courses or programs in the state. ;  
441 ~~pursuant to the findings and policy recommendations~~  
442 ~~required by section eleven of this article; The council has~~  
443 authority and responsibility for approval of all post-second-  
444 ary courses or programs providing community and technical  
445 college education as defined in section two, article one of this  
446 chapter.

447 (10) ~~Development, implementation and oversight of~~  
448 Developing, implementing and overseeing statewide and  
449 ~~region-wide~~ regional projects and initiatives related to  
450 providing post-secondary education at the baccalaureate

451 level and above such as those using funds from federal  
452 categorical programs or those using incentive and  
453 performance-based ~~funding funds~~ from any source; ~~and~~

454 (11) Quality assurance that intersects with all other duties  
455 of the commission particularly in the areas of research, data  
456 collection and analysis, personnel administration, planning,  
457 policy analysis, program review and approval, budgeting and  
458 information and accountability systems; and

459 (12) Developing budgets and allocating resources for  
460 governing boards under its jurisdiction:

461 (A) For all governing boards under its jurisdiction, except  
462 the governing boards of Marshall University and West  
463 Virginia University, the commission shall review institu-  
464 tional operating budgets, review and approve capital  
465 budgets, and distribute incentive and performance-based  
466 funds;

467 (B) For the governing boards of Marshall University and  
468 West Virginia University, the commission shall distribute  
469 incentive and performance-based funds and may review and  
470 comment upon the institutional operating budgets and  
471 capital budgets. The commission's comments, if any, shall be  
472 made part of the governing board's minute record.

473 (c) In addition to the powers and duties provided in  
474 subsections (a) and (b) of this section and any other powers  
475 and duties ~~as may be~~ assigned to it by law, the commission  
476 has ~~such other powers and duties as may be~~ necessary or  
477 expedient to accomplish the purposes of this article.

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

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

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

490 (3) Other circumstances which, in the view of the commis-  
491 sion, severely limit the capacity of the ~~board of Governors~~  
492 governing board to exercise its powers or carry out its duties  
493 and responsibilities.

494 The ~~commission may not withdraw specific powers for a~~  
495 ~~period of withdrawal of specific powers may not exceed~~  
496 ~~exceeding~~ two years. During ~~which time the commission is~~  
497 ~~authorized to~~ the withdrawal period, the commission shall  
498 take all steps necessary to reestablish ~~the conditions for~~  
499 ~~restoration of~~ sound, stable and responsible institutional  
500 governance.

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

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

5 (b) The commission shall set the qualifications for the  
6 position of Chancellor and, when a vacancy occurs, shall  
7 conduct a thorough nationwide search for qualified candi-  
8 dates. A qualified candidate is one who meets at least the  
9 following criteria:

- 10 (1) Possesses an excellent academic and administrative  
11 background;
- 12 (2) Demonstrates strong communication skills;



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

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

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

18 (c) The commission shall conduct written performance  
19 evaluations of the chancellor annually and may offer the  
20 chancellor a contract not to exceed three years. At the end of  
21 each contract period, the commission shall review the  
22 evaluations and make a determination by vote of its members  
23 on continuing employment and compensation level.

24 (d) When filling a vacancy in the position of chancellor, the  
25 commission shall enter into an initial employment contract  
26 for one year with the candidate selected. At the end of the  
27 initial contract period, and each contract period thereafter,  
28 the commission shall review the evaluations and make a  
29 determination by vote of its members on continuing employ-  
30 ment and compensation level for the chancellor.

31 (e) The commission sets the chancellor's salary. The salary  
32 may not exceed by more than twenty percent the average  
33 annual salary of chief executive officers of state systems of

34 higher education in the states that comprise the membership  
35 of the Southern Regional Education Board.

36 (f) The commission may employ a Vice Chancellor for  
37 Health Sciences who serves at the will and pleasure of the  
38 commission. The Vice Chancellor for Health Sciences shall  
39 coordinate the West Virginia University School of Medicine,  
40 the Marshall University School of Medicine and the West  
41 Virginia School of Osteopathic Medicine and also shall  
42 provide assistance to the governing boards on matters  
43 related to medical education and health sciences. The Vice  
44 Chancellor for Health Sciences shall perform all duties  
45 assigned by the chancellor, the commission and state law. In  
46 the case of a vacancy in the office of Vice Chancellor of  
47 Health Sciences, the duties assigned to this office by law are  
48 the responsibility of the chancellor or a designee.

49 (g) The commission shall employ a Vice Chancellor for  
50 Administration pursuant to section two, article four of this  
51 chapter.

52 (h) The commission shall employ a Vice Chancellor for  
53 Human Resources pursuant to section two-a, article four of  
54 this chapter. The person serving as senior director of human  
55 resources by the commission on January 1, 2011, is Vice

56 Chancellor for Human Resources on the effective date of this  
57 section. Additionally, the commission shall employ a quali-  
58 fied generalist in the field of human resources pursuant to  
59 section two-a, article four of this chapter. The human  
60 resources generalist shall report to the Vice Chancellor for  
61 Human Resources.

62 ~~(h)~~ (i) The commission may employ a Vice Chancellor for  
63 State Colleges who serves at the will and pleasure of the  
64 commission. ~~It is the duty and responsibility of~~ At a mini-  
65 mum, the Vice Chancellor for State Colleges to shall perform  
66 the following duties:

67 (1) Provide assistance to the commission, the chancellor  
68 and the state colleges on matters related to or of interest and  
69 concern to these institutions;

70 (2) Advise, assist and consult regularly with the ~~institu-~~  
71 ~~tional~~ presidents and ~~institutional boards of Governors~~  
72 governing boards of each state college;

73 (3) Serve as an advocate and spokesperson for the state  
74 colleges to represent them and to make their interests, views  
75 and issues known to the chancellor, the commission and  
76 governmental agencies;

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

79 In addition, the Vice Chancellor for State Colleges ~~has the~~  
80 ~~responsibility and the duty to~~ shall provide staff assistance  
81 to the ~~institutional~~ presidents and governing boards to the  
82 extent practicable.

83 (i) ~~(j)~~ On behalf of the commission, the chancellor may  
84 enter into agreements with any state agency or political  
85 subdivision of the state, any state ~~higher-education~~ institu-  
86 tion of higher education or any other person or entity to  
87 enlist staff assistance to implement the powers and duties  
88 assigned by the commission or by state law.

89 (j) ~~(k)~~ The chancellor is responsible for the daily operations  
90 of the commission and has the following responsibilities  
91 relating to the commission and the ~~institutions governing~~  
92 boards under its jurisdiction:

93 (1) To carry out policy and program directives of the  
94 commission;

95 (2) To develop and submit annual reports on the implemen-  
96 tation plan to achieve the goals and objectives set forth in  
97 section one-a, article one and article one-d of this chapter,  
98 and in the ~~institutional~~ compacts;

99 (3) To prepare and submit to the commission for its  
100 approval the proposed budget of the commission including  
101 the offices of the chancellor and the vice chancellors;

102 (4) To assist the governing boards in developing rules,  
103 subject to the provisions of section six, article one of this  
104 chapter. Nothing in this chapter requires the rules of the  
105 governing boards to be filed pursuant to the rule-making  
106 procedures provided in article three-a, chapter twenty-nine-  
107 a of this code. The commission and the council, either  
108 separately or jointly as appropriate, are responsible for  
109 ensuring that any policy which is required to be uniform  
110 across the institutions is applied in a uniform manner;

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

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

116 ~~(j)~~ (m) The chancellor, with the commission, advises the  
117 Legislature on matters of higher education in West Virginia.  
118 The chancellor shall work closely with the Legislative  
119 Oversight Commission on Education Accountability and  
120 with the elected leadership of the state to ensure that they

121 are fully informed about higher education issues and that the  
122 commission fully understands the goals, objectives and  
123 priorities for higher education that the Legislature has  
124 established by law.

125 ~~(m)~~ (n) The chancellor may design and develop for consid-  
126 eration by the commission new statewide or ~~regional~~ region-  
127 wide initiatives in accordance with the goals set forth in  
128 section one-a, article one and article one-d of this chapter,  
129 and the public policy agenda articulated by the commission.  
130 In those instances where the initiatives to be proposed have  
131 a direct and specific impact or connection to community and  
132 technical college education as well as to baccalaureate and  
133 graduate education, the Chancellor for Higher Education and  
134 the Chancellor for Community and Technical College  
135 Education shall design and develop the initiatives jointly for  
136 consideration by the commission and the council.

137 ~~(n)~~ (o) To further the goals of cooperation and coordination  
138 between the commission and the state Board of Education,  
139 the chancellor serves as an ex officio, nonvoting member of  
140 the state board. The chancellor shall work closely with  
141 members of the state Board of Education and with the State

142 Superintendent of Schools to assure that the following goals  
143 are met:

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

146 (2) Appropriate coordination of missions and programs.

147 ~~To further the goals of cooperation and coordination~~  
148 ~~between the Commission and the state Board of Education;~~  
149 ~~the chancellor serves as an ex officio, nonvoting member of~~  
150 ~~the state Board of Education.~~

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

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

1 (a) The governing boards are subject to the supervision of  
2 the commission or the council, as appropriate, except for in  
3 those instances where specific statutory exceptions are  
4 granted by law to the governing boards of Marshall Univer-  
5 sity and West Virginia University. ~~as it relates to the state~~  
6 ~~institutions of higher education known as Marshall Univer-~~  
7 ~~sity and West Virginia University~~

8 (b) The governing boards of all state institutions of higher  
9 education are subject to the provisions of law that relate to  
10 the administration of personnel matters including, specifi-

11 cally, articles seven, eight, nine and nine-a of this chapter  
12 and to rules promulgated and adopted in accordance with  
13 these provisions.

14 (c) The Chancellor for Higher Education and the Chancel-  
15 lor for Community and Technical College Education, under  
16 the supervision of their respective boards, are responsible for  
17 the coordination of policies, ~~and~~ purposes and rules of the  
18 governing boards and shall provide for and facilitate suffi-  
19 cient interaction among the governing boards and between  
20 the governing boards and the state Board of Education to  
21 meet the goals and objectives provided in the compacts and  
22 in section one-a, article one and article one-d of this chapter.

23 ~~(b)~~ (d) The governing boards and the state Board of  
24 Education shall provide ~~any and~~ all information requested  
25 by the commission ~~or~~ and the council, whether the request is  
26 made separately or jointly, in an appropriate format and in  
27 a timely manner.

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

1 Each governing board separately has the following powers  
2 and duties:

3 (a) Determine, control, supervise and manage the financial,  
4 business and education policies and affairs of the state  
5 institution of higher education under its jurisdiction;



6 (b) Develop a master plan for the institution under its  
7 jurisdiction.

8 (1) The ultimate responsibility for developing and updating  
9 each master plan at the ~~institutional level~~ institution resides  
10 with the ~~board of governors~~ governing board, but the  
11 ultimate responsibility for approving the final version of  
12 each ~~institutional~~ master plan, including periodic updates,  
13 resides with the commission or council, as appropriate.

14 (2) Each ~~institutional~~ master plan shall include, but is not  
15 ~~be~~ limited to, the following:

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

19 (B) A well-developed set of goals, objectives and priorities  
20 outlining missions, degree offerings, resource requirements,  
21 physical plant needs, personnel needs, enrollment levels and  
22 other planning determinates and projections necessary in a  
23 plan to assure that the needs of the institution's area of  
24 responsibility for a quality system of higher education are  
25 addressed;

26 (C) Documentation showing how the governing board  
27 involved the commission or council, as appropriate, ~~institu-~~

28 ~~tional~~ constituency groups, clientele of the institution and  
29 the general public in the development of all segments of the  
30 ~~institutional~~ master plan.

31 (3) The plan shall be established for periods of not fewer  
32 than three nor more than five years and shall be revised  
33 periodically as necessary, including adding or deleting  
34 ~~degree programs as the governing board in its discretion~~  
35 ~~determines is necessary;~~ bachelor's, master's and doctoral  
36 degree programs for all governing boards as approved by the  
37 commission or council, respectively, except for the governing  
38 boards of Marshall University and West Virginia University  
39 only, the commission may review, but may not approve or  
40 disapprove, additions or deletions of degree programs.

41 (c) Develop a ten-year campus development plan in  
42 accordance with article nineteen of this chapter;

43 (d) Prescribe for the institution, under its jurisdiction, in  
44 accordance with its master plan and compact, specific  
45 functions and responsibilities to achieve the goals, objectives  
46 and priorities established in articles one and one-d of this  
47 chapter to meet the higher education needs of its area of  
48 responsibility and to avoid unnecessary duplication;

49 (e) Direct the preparation of an appropriation request for  
50 the institution under its jurisdiction, which relates directly  
51 to missions, goals and projections ~~as~~ found in the ~~institu-~~  
52 ~~tional~~ master plan and the ~~institutional~~ compact;

53 (f) Consider, revise and submit for review and approval to  
54 the commission or council, as appropriate, an appropriation  
55 request on behalf of the institution under its jurisdiction;

56 (g) Review, at least every five years, all academic programs  
57 offered at the institution under its jurisdiction. The review  
58 shall address the viability, adequacy and necessity of the  
59 programs in relation to established state goals, objectives  
60 and priorities, the ~~institutional~~ master plan, the ~~institutional~~  
61 compact and the education and workforce needs of its  
62 responsibility district. As a part of the review, each govern-  
63 ing board shall require the institution under its jurisdiction  
64 to conduct periodic studies of its graduates and their em-  
65 ployers to determine placement patterns and the effective-  
66 ness of the education experience. Where appropriate, these  
67 studies should coincide with the studies required of many  
68 academic disciplines by their accrediting bodies;

69 (h) Ensure that the sequence and availability of academic  
70 programs and courses offered by the institution under its

71 jurisdiction is such that students have the maximum oppor-  
72 tunity to complete programs in the time frame normally  
73 associated with program completion. Each governing board  
74 is responsible to see that the needs of nontraditional college-  
75 age students are appropriately addressed and, to the extent  
76 it is possible for the individual governing board to control, to  
77 assure core course work completed at the institution is  
78 transferable to any other state institution of higher educa-  
79 tion for credit with the grade earned;

80 (i) Subject to article one-b of this chapter, approve the  
81 teacher education programs offered in the institution under  
82 its control. In order to permit graduates of teacher education  
83 programs to receive a degree from a nationally accredited  
84 program and in order to prevent expensive duplication of  
85 program accreditation, the commission may select and use  
86 one nationally recognized teacher education program  
87 accreditation standard as the appropriate standard for  
88 program evaluation;

89 (j) Involve faculty, students and classified employees in  
90 ~~institutional-level~~ institution-level planning and  
91 decisionmaking when those groups are affected;

92 (k) Subject to ~~the provisions of~~ federal law and pursuant to  
93 articles seven, eight, ~~and nine~~ and nine-a of this chapter and  
94 to rules adopted by the commission and the council, adminis-  
95 ter a system for the management of personnel matters,  
96 including, but not limited to, ~~personnel classification,~~  
97 ~~compensation and discipline~~ for employees at the institution  
98 under its jurisdiction;

99 (l) Administer a system for hearing employee grievances  
100 and appeals. Notwithstanding any other provision of this  
101 code to the contrary, the procedure established in article  
102 two, chapter six-c of this code is the exclusive mechanism for  
103 hearing prospective employee grievances and appeals;

104 (m) Solicit and use or expend voluntary support, including  
105 financial contributions and support services, for the institu-  
106 tion under its jurisdiction;

107 (n) Appoint a president for the institution under its  
108 jurisdiction subject to section six, article one-b of this  
109 chapter;

110 (o) Conduct written performance evaluations of the  
111 president pursuant to section six, article one-b of this  
112 chapter;

113 (p) Employ all faculty and staff at the institution under its  
114 jurisdiction. The employees operate under the supervision of  
115 the president, but are employees of the governing board;

116 (q) Submit to the commission or council, as appropriate,  
117 any data or reports requested by the commission or council;  
118 ~~as appropriate~~, within the time frame set by the commission  
119 or council;

120 (r) Enter into contracts or consortium agreements with the  
121 public schools, private schools or private industry to provide  
122 technical, vocational, college preparatory, remedial and  
123 customized training courses at locations either on campuses  
124 of the state institutions of higher education or at off-campus  
125 locations in the institution's responsibility district. To  
126 accomplish this goal, the boards may share resources among  
127 the various groups in the community;

128 (s) Provide and transfer ~~funding~~ funds and property to  
129 certain corporations pursuant to section ten, article twelve  
130 of this chapter;

131 (t) Delegate, with prescribed standards and limitations, the  
132 part of its power and control over the business affairs of the  
133 institution to the president in any case where it considers the  
134 delegation necessary and prudent in order to enable the

135 institution to function in a proper and expeditious manner  
136 and to meet the requirements of its master plan and compact.  
137 If a governing board elects to delegate any of its power and  
138 control under this subsection, it shall enter the delegation in  
139 the minutes of the meeting when the decision was made and  
140 shall notify the commission or council, as appropriate. Any  
141 delegation of power and control may be rescinded by the  
142 appropriate governing board, the commission or council, as  
143 appropriate, at any time, in whole or in part, except that the  
144 commission may not revoke delegations of authority made by  
145 the governing ~~boards~~ board of Marshall University or West  
146 Virginia University; ~~as they relate to the state institutions of~~  
147 ~~higher education known as Marshall University and West~~  
148 ~~Virginia University;~~

149 (u) Unless changed by the commission or the council, as  
150 appropriate, continue to abide by existing rules setting forth  
151 standards for ~~acceptance of~~ accepting advanced placement  
152 credit for the institution under its jurisdiction. Individual  
153 departments at a state institution of higher education, ~~may,~~  
154 ~~upon with~~ approval of the ~~institutional~~ faculty senate, may  
155 require higher scores on the advanced placement test than  
156 scores designated by the governing board when the credit is

157 to be used toward meeting a requirement of the core curricu-  
158 lum for a major in that department;

159 (v) Consult, cooperate and ~~work~~ coordinate with the State  
160 Treasurer and the State Auditor to update as necessary and  
161 maintain an efficient and cost-effective system for the  
162 financial management and expenditure of appropriated and  
163 nonappropriated revenue at the institution under its jurisdic-  
164 tion. ~~that ensures~~ The system shall ensure that properly  
165 submitted requests for payment ~~be~~ are paid on or before the  
166 due date but, in any event, within fifteen days of receipt in  
167 the State Auditor's office;

168 (w) In consultation with the appropriate chancellor and the  
169 Secretary of the Department of Administration, develop,  
170 update as necessary and maintain a plan to administer a  
171 consistent method of conducting personnel transactions,  
172 including, but not limited to, hiring, dismissal, promotions,  
173 changes in salary or compensation and transfers at the  
174 institution under its jurisdiction. Each personnel transaction  
175 shall be accompanied by the appropriate standardized  
176 system or forms, as appropriate, which shall be submitted to  
177 the respective governing board and the Department of  
178 ~~Finance and Administration:~~



179 (1) Not later than July 1, 2012, the Department of Adminis-  
180 tration shall make available to each governing board the  
181 option of using a standardized electronic system for these  
182 personnel transactions.

183 (2) The Secretary of the Department of Administration may  
184 suspend a governing board's participation in the standard-  
185 ized electronic system if he or she certifies to the Governor  
186 that the governing board has failed repeatedly and substan-  
187 tially to comply with the department's policies for adminis-  
188 tering the electronic system;

189 (x) Notwithstanding any other provision of this code to the  
190 contrary, transfer funds from any account specifically  
191 appropriated for its use to any corresponding line item in a  
192 general revenue account at any agency or institution under  
193 its jurisdiction as long as the transferred funds are used for  
194 the purposes appropriated;

195 (y) Transfer funds from appropriated special revenue  
196 accounts for capital improvements under its jurisdiction to  
197 special revenue accounts at agencies or institutions under its  
198 jurisdiction as long as the transferred funds are used for the  
199 purposes appropriated in accordance with article nineteen of  
200 this chapter;

201 (z) Notwithstanding any other provision of this code to the  
202 contrary, acquire legal services that are necessary, including  
203 representation of the governing board, its institution,  
204 employees and officers before any court or administrative  
205 body. The counsel may be employed either on a salaried basis  
206 or on a reasonable fee basis. In addition, the governing board  
207 may, but is not required to, call upon the Attorney General  
208 for legal assistance and representation as provided by law;  
209 and

210 (aa) Contract and pay for disability insurance for a class or  
211 classes of employees at a state institution of higher education  
212 under its jurisdiction.

**§18B-2A-8. Additional powers and duties of governing boards.**

1 (a) The governing board of a state institution of higher  
2 education is granted the additional powers and assigned the  
3 associated duties and authorities pursuant to this section  
4 previously granted and assigned to the state institutions of  
5 higher education known as the governing boards of Marshall  
6 University and West Virginia University, ~~subject to the~~  
7 ~~following: if~~

8 (1) ~~The institutional operating budgets of all institutions to~~  
9 ~~which this section applies have achieved a level of funding~~

10 ~~comparable with, but not less than ninety percent of, their~~  
 11 ~~respective peers, as established pursuant to section three,~~  
 12 ~~article one-a of this chapter;~~(2) the commission or council, as  
 13 appropriate, approves granting the powers and assigning the  
 14 duties and authorities to that institution governing board.  
 15 and

16 (3) ~~The powers, duties and authorities may not be granted~~  
 17 ~~to any institution prior to the first day of July, two thousand~~  
 18 ~~twelve.~~

19 (b) The powers and duties ~~and authorities~~ that may be  
 20 granted and assigned pursuant to this section are ~~those~~  
 21 provided in the following:

22 (1) ~~Section four-a, article six, chapter five of this code;~~

23 (2) ~~Section two, article one, chapter five-g of this code;~~

24 (3) ~~Section twelve-b, article one, chapter twelve of this~~  
 25 ~~code;~~

26 (4) (1) Sections five, six and seven, and eight, article three,  
 27 chapter twelve of this code;

28 (5) ~~Sections three and six, article one of this chapter;~~

29 (6) ~~Section two, article one-a of this chapter;~~

30 (7) ~~Section four, article one-b of this chapter;~~

31 (8) ~~Sections three and four of this article;~~

32 ~~(9) (2) Sections~~ Section two and three, article three of this  
33 chapter;

34 ~~(10) (3) Sections five, five-a, six and seven~~, article four of  
35 this chapter;

36 ~~(11) (4) Sections three, four, Section seven and nine~~, article  
37 five of this chapter; and

38 ~~(12) (5) Sections one and Section six-a~~, article ten of this  
39 chapter.

40 ~~(c) This section does not apply to any community and~~  
41 ~~technical college.~~

42 (c) Additional powers and duties related to purchasing —  
43 The powers and duties granted and assigned to the governing  
44 boards of Marshall University and West Virginia University  
45 by section four, article five of this chapter are extended to  
46 the governing boards of all other state institutions of higher  
47 education under the following conditions:

48 (1) The commission and council shall conduct a study to  
49 determine the capacity of each governing board under their  
50 respective jurisdictions to implement the additional powers  
51 and carry out the additional assigned duties related to  
52 purchasing;

53 (2) Based upon the findings of the study, the commission  
54 and council shall approve the governing boards under their  
55 respective jurisdictions that they determine have the capac-  
56 ity to exercise the powers and carry out the assigned duties  
57 pursuant to section four, article five of this chapter; and

58 (3) The commission and council shall report their findings  
59 together with a list of the governing boards they each have  
60 approved to the Legislative Oversight Commission on  
61 Education Accountability by December 1, 2011.

62 (d) The commission and council have the power and the  
63 duty to monitor participation and provide technical assis-  
64 tance, as requested or required, to governing boards under  
65 their respective jurisdictions and to limit or rescind exercise  
66 of the powers, in whole or in part, granted by this section to  
67 a governing board if, in the sole determination of the  
68 commission or council, as appropriate, that action is war-  
69 ranted.

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

**§18B-2B-3. West Virginia Council for Community and Technical  
College Education; supervision of chancellor; chief  
executive officer.**

1 (a) There is continued the West Virginia Council for  
2 Community and Technical College Education. The council  
3 has all the powers and duties assigned by law to the joint  
4 commission for vocational—technical-occupational educa-  
5 tion prior to ~~the effective date of this section~~ July 1, 2001,  
6 and ~~such~~ all other powers and duties ~~as may be~~ assigned by  
7 law.

8 (b) The council shall employ a chancellor for community  
9 and technical college education. The chancellor serves as  
10 chief executive officer of the council at the will and pleasure  
11 of the council. The chancellor shall be compensated at a level  
12 set by the council not to exceed eighty percent of the ~~annual~~  
13 ~~salary of the chancellor for higher education~~ average annual  
14 salary of chief executive officers of the state systems of  
15 community and technical colleges in the states that comprise  
16 the membership of the Southern Regional Education Board.

17 ~~(1) The vice chancellor for community and technical~~  
18 ~~college education and workforce development, as the current~~  
19 ~~chief executive officer of the council, shall continue in such~~  
20 ~~capacity upon the effective date of this section, and shall be~~  
21 ~~the chancellor for community and technical college educa-~~  
22 ~~tion.~~

23 ~~(A) The council shall conduct a written performance~~  
24 ~~evaluation of the chancellor one year after the effective date~~  
25 ~~of this section. The council shall report the results of the~~  
26 ~~evaluation to the Legislative Oversight commission on~~  
27 ~~education accountability during the legislative interim~~  
28 ~~meeting period following the evaluation.~~

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

32 ~~(C) After the initial contract period;~~ (c) The council shall  
33 conduct written performance evaluations of the chancellor  
34 annually and may offer the chancellor a contract ~~of longer~~  
35 ~~term, but~~ not to exceed three years. At the end of each  
36 contract period, the council shall review the evaluations and  
37 make a determination by vote of its members on continuing  
38 employment and level of compensation.

39 ~~(D)~~ (d) When a vacancy occurs in the position of chancel-  
40 lor, the council shall enter into an initial employment  
41 contract for one year with the candidate selected to fill the  
42 vacancy. At the end of the initial period, and each contract  
43 period thereafter, the council shall ~~make a determination by~~  
44 ~~vote of its members on continuing employment and compen-~~

45 ~~sation level for the chancellor and shall continue thereafter~~  
46 ~~as set forth in paragraph (C) of this subdivision~~ review the  
47 evaluations and make a determination by vote of its members  
48 on continuing employment and compensation level for the  
49 chancellor.

50 ~~(2)~~ (e) The chancellor individual who was serving as Vice  
51 Chancellor for Community and Technical College Education  
52 and Workforce Development and who became chancellor  
53 effective March 13, 2004, maintains all benefits of employ-  
54 ment held, accrued and afforded as the Vice Chancellor for  
55 Community and Technical College Education and Workforce  
56 Development prior to March 13, 2004, ~~Such~~ These benefits  
57 include, but are not limited to, retirement benefits, continued  
58 membership in the same retirement system, ~~any~~ insurance  
59 coverage and sick and annual leave. For the purposes of  
60 leave conversion established in section thirteen, article  
61 sixteen, chapter five of this code, the chancellor is not a new  
62 employee and the prohibition on conversion does not apply  
63 if the chancellor was eligible for leave conversion while  
64 serving as vice chancellor. ~~on the day preceding the effective~~  
65 ~~date of this section. On the effective date of this section for~~



66 ~~the purpose of section thirteen, article sixteen, chapter five~~  
67 ~~of this code, the chancellor:~~

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

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

**ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING  
BOARDS.**

**§18B-3-1. Legislative findings, purpose; intent; definition.**

1 (a) The Legislature finds that an effective and efficient  
2 system of doctoral-level education is vital to providing for  
3 the economic well-being of the citizens of West Virginia and  
4 for accomplishing established state goals and objectives. As  
5 the only research and doctoral-granting public universities  
6 in the state, Marshall University and West Virginia Univer-  
7 sity are major assets to the citizens of West Virginia and  
8 must be an integral part of any plan to strengthen and  
9 expand the economy.

10 (b) The Legislature further finds that these two institutions  
11 must compete in both a national and global environment that  
12 is rapidly changing, while they continue to provide high  
13 quality education that is both affordable and accessible and  
14 remain accountable to the people of West Virginia for the  
15 most efficient and effective use of scarce resources.

16 (c) The Legislature further finds that Marshall University  
17 and West Virginia University, under the direction of their  
18 respective governing boards, ~~have sufficient staff and~~  
19 ~~internal expertise to~~ may manage operational governance of  
20 their institutions in an efficient and accountable manner and  
21 ~~can~~ may best fulfill their public missions when their govern-  
22 ing boards are given flexibility and autonomy sufficient to  
23 meet state goals, objectives and priorities established in this  
24 article, and in section one-a, article one and article one-d of  
25 this chapter.

26 (d) Therefore, the purposes of this article include, but are  
27 not limited to, the following:

28 (1) Enhancing the competitive position of Marshall Univer-  
29 sity and West Virginia University in the current environment  
30 for research and development;

31 (2) Providing the governing boards of these institutions  
32 with operational flexibility and autonomy in certain areas,  
33 including tools to promote economic development in West  
34 Virginia;

35 (3) Encouraging the development of research expertise in  
36 areas directly beneficial to the state; ~~and~~

37 (4) Focusing the attention and resources of the governing  
38 boards on state goals, objectives and priorities to enhance  
39 the competitive position of the state and the economic, social  
40 and cultural well-being of its citizens; and

41 (5) Providing additional autonomy and operational flexi-  
42 bility and assigning certain additional responsibilities to  
43 governing boards of other state institutions of higher  
44 education.

45 ~~(e) The following terms wherever used or referred to in this~~  
46 ~~chapter have the following meaning, unless a different~~  
47 ~~meaning plainly appears from the context:~~

48 ~~(1) "State institution of higher education known as~~  
49 ~~Marshall University" means the doctoral-granting research~~  
50 ~~institution and does not include Marshall Community and~~  
51 ~~Technical College; and~~

52 ~~(2) “State institution of higher education known as West~~  
53 ~~Virginia University” means the doctoral-granting research~~  
54 ~~institution, and does not include any of the following:~~

55 ~~(A) The regional campus known as West Virginia Univer-~~  
56 ~~sity Institute of Technology;~~

57 ~~(B) The administratively linked institution known as the~~  
58 ~~Community and Technical College at West Virginia Univer-~~  
59 ~~sity Institute of Technology; and~~

60 ~~(C) The regional campus known as West Virginia Univer-~~  
61 ~~sity at Parkersburg.~~

62 ~~(f) (e)~~ The governing boards of Marshall University and  
63 West Virginia University each have the power and the  
64 obligation to perform functions, tasks and duties as pre-  
65 scribed by law and to exercise their authority and carry out  
66 their responsibilities in a manner that is consistent with and  
67 not in conflict with the powers and duties assigned by law to  
68 the ~~West Virginia council for Community and Technical~~  
69 ~~College Education~~ and the ~~Higher Education Policy commis-~~  
70 ~~sion.~~

71 ~~(g) (f)~~ While the governing boards of Marshall University  
72 ~~and West Virginia University, respectively,~~ may choose to  
73 delegate powers and duties to the their respective presidents

74 ~~of the state institutions of higher education known as~~  
 75 ~~Marshall University and West Virginia University~~ pursuant  
 76 to subsection (s), section four, article two-a of this chapter,  
 77 ultimately, it is they who are accountable to the Legislature,  
 78 the Governor and the citizens of West Virginia for meeting  
 79 the established state goals, objectives and priorities set forth  
 80 in this article, and in section one-a, article one and article  
 81 one-d of this chapter. Therefore, ~~it is the intent of the~~  
 82 ~~Legislature that~~ grants of operational flexibility and auton-  
 83 omy ~~be~~ are made directly to the governing boards and are  
 84 not grants of operational flexibility and autonomy to the  
 85 ~~presidents~~ president of ~~these institutions~~ an institution.

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

1 (a) *Relationship between the commission and the governing*  
 2 *boards. —*

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

7 (2) The primary responsibility of the commission is to work  
 8 collaboratively with the governing boards to research,

9 develop and propose policy that will achieve the established  
10 goals, ~~and objectives, and priorities~~ set forth in this chapter  
11 and chapter eighteen-c of this code; and

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

14 (A) Advocating for public higher education at the state  
15 level; ~~and~~

16 (B) Jointly with the council, implementing the classifica-  
17 tion and compensation system established by articles seven,  
18 eight, nine and nine-a of this chapter; and

19 ~~(B)~~ (C) Collecting and analyzing data, researching, devel-  
20 oping recommendations, and advising the Legislature and  
21 the Governor on broad policy initiatives, use of incentive  
22 funding, national and regional trends in higher education  
23 and issues of resource allocation involving multiple govern-  
24 ing boards.

25 (b) *Relationship between the council and the governing*  
26 *boards.* — (1) The council maintains all powers and duties  
27 assigned to it by law or policy rule relating to ~~the institution~~  
28 ~~known as Marshall Community and Technical College, the~~  
29 ~~administration known as The Community and Technical~~  
30 ~~College at West Virginia University Institute of Technology~~

31 ~~and the institution known as West Virginia University at~~  
 32 ~~Parkersburg~~ community and technical colleges as defined in  
 33 section two, article one of this chapter;

34 (2) The council functions as a coordinating board for the  
 35 institutions under its jurisdiction which make up the  
 36 statewide network of independently-accredited community  
 37 and technical colleges. In addition to recognizing the  
 38 authority assigned by law to the council and abiding by rules  
 39 duly promulgated by the council relating to the community  
 40 and technical colleges, ~~it is the responsibility of the govern-~~  
 41 ~~ing boards of Marshall University and West Virginia Univer-~~  
 42 ~~sity to~~ shall exercise their authority and carry out their  
 43 responsibilities in a manner that is consistent with and  
 44 complementary to the powers and duties assigned by law or  
 45 ~~policy~~ rule to the community and technical colleges or to the  
 46 council;

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

**§18B-3-4. Duty of governing boards to address state priorities.**

1 (a) The expertise of faculty and graduate students at ~~the~~  
 2 state institutions of higher education ~~known as Marshall~~

3 ~~University and West Virginia University~~ is important to  
4 every citizen of this state. It is the responsibility of the  
5 governing boards to channel this expertise into research and  
6 analysis that will yield measurable benefits to the citizens of  
7 West Virginia. Therefore, in addition to the goals, ~~for post-~~  
8 ~~secondary education~~ objectives and priorities established in  
9 section one-a, article one and article one-d of this chapter  
10 and goals established elsewhere in this code, it is the respon-  
11 sibility of the governing boards ~~in collaboration~~ to concen-  
12 trate attention and resources on certain specific state  
13 priorities that have a direct, positive impact on the economic,  
14 social and cultural well-being of the people of West Virginia.  
15 ~~These priorities include, but are not limited to, the following:~~

16 (a) Priorities for Marshall University and West Virginia  
17 University in collaboration:

18 (1) Developing Regional Brownfield Assistance Centers  
19 pursuant to section seven, article eleven of this chapter;

20 (2) Performing professional development-related research  
21 and coordinating the delivery of professional development to  
22 educators in the public schools of the state pursuant to ~~the~~  
23 ~~provisions of~~ article two, chapter eighteen of this code; and



24 (3) Building subject matter expertise in public ~~school~~  
25 education finance, including mastery of the theories and  
26 concepts used in developing formulas to provide state-level  
27 financial support to public education. ~~and~~

28 ~~(4) Researching and proposing cost-efficient methods to the~~  
29 ~~Legislature for governing boards other than Marshall~~  
30 ~~University and West Virginia University to dispose of~~  
31 ~~obsolete computers and computer-related equipment.~~

32 (b) The Legislature may, but is not required to, make  
33 additional appropriations for the benefit of ~~the state institu-~~  
34 ~~tions of higher education known as~~ Marshall University and  
35 West Virginia University to assist them in fulfilling the  
36 purposes set forth in subsection (a) of this section.

37 (c) Additional priorities for governing boards:

38 ~~(e)~~ (d) In addition to the priorities established in subsection  
39 (a) of this section, each governing board under the jurisdic-  
40 tion of the commission ~~separately~~ shall focus resources and  
41 attention on improving ~~their~~ its graduation ~~rates~~ rate for  
42 full-time undergraduate students as a specific institutional  
43 priority. The graduation rate is measured as a percentage of  
44 the number of undergraduate students who obtain a degree  
45 within six years of the date of enrollment as full-time

46 freshmen. ~~The governing boards shall develop and imple-~~  
47 ~~ment plans to reach the following goals:~~

48 (1) ~~Marshall University shall attain a graduation rate for~~  
49 ~~full-time undergraduate students of forty percent by the first~~  
50 ~~day of July, two thousand eight, and shall attain a gradua-~~  
51 ~~tion rate for full-time undergraduate students of forty-five~~  
52 ~~percent by July 1, 2010.~~

53 (2) ~~West Virginia University shall attain a graduation rate~~  
54 ~~for full-time undergraduate students of sixty percent by the~~  
55 ~~first day of July, two thousand eight, and shall attain a~~  
56 ~~graduation rate for full-time undergraduate students of~~  
57 ~~sixty-three percent by July 1, 2010.~~

58 (1) By July 1, 2015, the governing board of each state  
59 institution of higher education under the jurisdiction of the  
60 commission, including the governing boards of Marshall  
61 University and West Virginia University, shall attain a  
62 graduation rate for full-time undergraduate students that  
63 equals or exceeds the graduation rate of its peers established  
64 pursuant to section three, article one-a of this chapter.

65 (3) (2) The commission shall monitor and report annually  
66 by December 1, 2005, and annually thereafter, to the Legisla-  
67 tive Oversight Commission on Education Accountability on

68 the progress of the governing boards toward meeting the  
69 goals set forth in ~~subdivisions (1) and (2)~~ of this subsection.

**ARTICLE 4. GENERAL ADMINISTRATION.**

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

1 (a) The council and commission each shall employ a  
2 chancellor to assist in the performance of their respective  
3 duties and responsibilities subject to the following condi-  
4 tions:

5 (1) Each chancellor serves at the will and pleasure of the  
6 hiring body.

7 (2) Neither chancellor may hold or retain any other  
8 administrative position within the system of higher educa-  
9 tion while employed as chancellor.

10 (3) Each chancellor ~~is responsible for carrying~~ shall carry  
11 out the directives of the body by whom employed and shall  
12 ~~work~~ collaborate with that body in developing policy  
13 options.

14 (4) The commission is responsible to the council and the  
15 Chancellor for Community and Technical College Education  
16 for providing services in areas essential to exercising the  
17 powers and duties assigned to the council by law. The  
18 commission may not charge the council any fee for the

19 provision of these essential services. The service areas  
20 include, but are not limited to, legal services, research,  
21 technology, computing, finance and facilities, academic  
22 affairs, telecommunications, human resources, student  
23 services and any other general areas the council considers to  
24 be essential to the exercise of its legal authority. The services  
25 are provided under the general supervision of the Vice  
26 Chancellor for Administration.

27 (5) For the purpose of developing or evaluating policy  
28 options, the chancellors may request the assistance of the  
29 presidents and staff ~~of the institutions~~ employed by the  
30 governing boards under their respective jurisdictions.

31 (b) In addition to the staff positions designated in subdivi-  
32 sion (4), subsection (a) of this section, and section five, article  
33 one-b of this chapter, the Vice Chancellor for Administra-  
34 tion, employed pursuant to section two of this article, serves  
35 the offices of the chancellors to discharge jointly the duties  
36 and responsibilities of the council and commission.

37 ~~(c) The Vice Chancellor for Health Sciences shall coordi-~~  
38 ~~nate the West Virginia University School of Medicine, the~~  
39 ~~Marshall University School of Medicine and the West~~  
40 ~~Virginia School of Osteopathic Medicine.~~

41 ~~(d)~~ (c) Suitable offices for the Vice Chancellor of Adminis-  
42 tration, the Vice Chancellor for Human Resources and other  
43 staff shall be provided in Kanawha County.

**§18B-4-2a. Employment of vice chancellor for human resources;  
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  
3 shall employ a Vice Chancellor for Human Resources who  
4 may not be dismissed without the consent of the council. The  
5 person employed as senior director of human resources by  
6 the commission on January 1, 2011, becomes the Vice  
7 Chancellor for Human Resources on the effective date of this  
8 section. Thereafter, any vacancy occurring in this position  
9 shall be filled in accordance with this section.

10 (b) The successful candidate for the position of vice  
11 chancellor provides vision, leadership and direction to  
12 ensure the human resources system for employees of the  
13 commission, council and governing boards is effective,  
14 efficient and aligned with industry best practices. The  
15 successful candidate possesses the following minimum  
16 qualifications:

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

19 (2) Thorough knowledge of and experience administering  
20 employment laws and regulations, recruiting and selection  
21 techniques, employee relations techniques and methodolo-  
22 gies, legal reporting and compliance requirements.

23 (c) The Vice Chancellor, in consultation with the chancel-  
24 lors, performs functions, tasks and responsibilities necessary  
25 to carry out the policy directives of the council and commis-  
26 sion and any other duties prescribed by law. The Vice  
27 Chancellor oversees and monitors all issues related to the  
28 personnel system for higher education employees and  
29 provides technical support to organizations as directed or  
30 requested on all issues related to the design, development,  
31 implementation and administration of the personnel system  
32 established by this chapter and by duly promulgated rules.

33 (d) The Vice Chancellor supervises the professional,  
34 administrative, clerical and other employees necessary to  
35 carry out assigned powers and duties. In consultation with  
36 the Vice Chancellor for Administration and the chancellors,  
37 the Vice Chancellor shall delineate staff responsibilities as  
38 considered desirable and appropriate.

39 (e) The Vice Chancellor provides support to the chancellors  
40 and organizations on a highly diverse range of issues includ-  
41 ing assisting them to develop a culture of constant improve-  
42 ment in a rapidly changing, complex market. Duties of the  
43 position include, but are not limited to, the following:

44 (1) Developing and implementing business-related initia-  
45 tives involving organizational design, labor cost manage-  
46 ment, executive recruitment and compensation, leadership  
47 and management development, human resources data and  
48 technology, and compensation and benefits programs;

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

52 (3) Assuming responsibility for coordinating compensation  
53 and benefits programs for all employees, including designing  
54 these programs, and for supporting each higher education  
55 organization in implementing the programs;

56 (4) Maintaining consistent human resources information  
57 systems and selecting and supervising benefits consultants,  
58 brokers, trustees and necessary legal assistants;

59 (5) Maintaining the classification system by providing for  
60 regular review of jobs to determine whether the current job

61 description accurately reflects the duties and responsibilities  
62 and whether the job is properly classified or needs to be  
63 modified or deleted. Every job shall be reviewed at least once  
64 within each five-year period;

65 (6) Ensuring that market comparison studies are conducted  
66 for each class of employees and providing a report annually  
67 to each organization on the status of relative market equity  
68 among the employee classifications.

69 (7) Carrying out the following duties related to training  
70 and development:

71 (A) Analyzing and determining training needs of organiza-  
72 tion employees and formulating and developing plans,  
73 procedures and programs to meet specific training needs and  
74 problems. Successful completion of these tasks requires the  
75 vice chancellor to work closely with and communicate  
76 regularly with the training and development coordinators  
77 employed by each organization;

78 (B) Developing, constructing, maintaining and revising  
79 training manuals and training aids or supervising develop-  
80 ment of these materials by outside suppliers;

81 (C) Planning, conducting, and coordinating management  
82 inventories, appraisals, placement, counseling and training;



83 (D) Coordinating participation by all employees in training  
84 programs developed internally or provided by outside  
85 contractors; and

86 (E) Administering and analyzing an annual training and  
87 development needs survey. The survey may coincide with the  
88 completion of the annual performance review process.

89 (8) Conducting performance reviews of personnel who  
90 administer human resources functions at each organization  
91 in relation to best practices pursuant to articles seven, eight,  
92 nine and nine-a of this chapter and rules of the commission  
93 and council. Human resources personnel at each organiza-  
94 tion shall be evaluated at least once within each three-year  
95 period. The Vice Chancellor shall analyze the results of these  
96 evaluations and target training and professional develop-  
97 ment to identified areas of deficiency.

98 (f) To assist in performing the duties of vice chancellor, the  
99 commission, with the consent of the council, shall employ a  
100 generalist/manager who is well qualified in the field of  
101 human resources. The position reports to the Vice Chancellor  
102 for Human resources and shall be filled on a permanent basis  
103 by September 1, 2011. The successful candidate is responsi-  
104 ble for a wide range of human resources management,

105 reporting and development activities and works collabor-  
106 atively with governing boards and their employees at all  
107 levels.

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

**§18B-5-9. Higher education fiscal responsibility.**

1 (a) The governing boards of Marshall University and West  
2 Virginia University each shall ensure the fiscal integrity of  
3 ~~its~~ their operations using best business and management  
4 practices.

5 (1) The practices include at least the following:

6 (A) Complying with Generally Accepted Accounting  
7 Principles of the Governmental Accounting Standards Board  
8 (GAMP); and the Generally Accepted Government Auditing  
9 Standards of the Government Accountability Office (GAGA);

10 (B) Operating without material weakness in internal  
11 controls as defined by GAMP, GAGA and, where applicable,  
12 the Office of Management and Budget (OMB) Circular A-133;

13 (C) Maintaining annual audited financial statements with  
14 an unqualified opinion;

15 (D) ~~Presenting~~ Preparing annual audited financial state-  
16 ments to the respective governing board as coordinated and  
17 directed by the commission and council, respectively, and as

18 the commission requires to complete the higher education  
19 fund audit;

20 (E) Maintaining quarterly financial statements certified by  
21 the chief financial officer of the institution; and

22 (F) Implementing best practices from Sarbanes-Oxley, or  
23 adopting the applicable tenets of Sarbanes-Oxley as best  
24 practices.

25 (2) ~~Marshall University, West Virginia University~~ Each  
26 governing board and the any affiliated research corporation  
27 ~~of each~~ (A) shall comply with the OMB Circular A-133  
28 annual grant award audit requirements and ~~(B) is~~ are exempt  
29 from ~~the provisions of~~ section fourteen, article four, chapter  
30 twelve of this code.

31 (3) Within thirty days of the completion of the financial  
32 audit report, the governing boards ~~of Marshall University~~  
33 ~~and West Virginia University~~ each shall furnish to the  
34 commission or council, respectively, ~~the Legislative Over-~~  
35 ~~sight Commission on Education Accountability and the Joint~~  
36 ~~Committee on Government and Finance~~ copies of the annual  
37 audited financial statements.

38 (b) The commission ~~or~~ and council, ~~as appropriate~~ each,  
39 shall ensure the fiscal integrity of any electronic process

40 conducted at its offices and ~~at all other institutions using by~~  
41 the governing boards under its respective jurisdiction by  
42 applying best business and management practices.

43 (c) ~~Marshall University, West Virginia University the~~  
44 ~~council and the commission~~ To the maximum extent practi-  
45 cable, each higher education organization shall implement a  
46 ~~process whereby, to the maximum extent practicable,~~  
47 provide for its employees of Marshall University, West  
48 Virginia University, the Council, Commission and all other  
49 state institutions of higher education to receive their wages  
50 via electronic transfer or direct deposit.

51 (d) ~~Notwithstanding the provisions of section ten-a, article~~  
52 ~~three, chapter twelve of this code, and except as otherwise~~  
53 ~~provided in this subsection, the amount of any purchase~~  
54 ~~made with~~ any other provision of this code to the contrary,  
55 a purchasing card may be used by the council, the commis-  
56 sion or any other a governing board of a state institution of  
57 higher education may not exceed five thousand dollars to  
58 make any payment authorized by the Auditor, including  
59 regular routine payments and travel and emergency pay-  
60 ments. Payments are set at an amount to be determined by  
61 the Auditor.

62 (1) Subject to approval of the Auditor, ~~any~~ an emergency  
63 payment and ~~any~~ a routine, regularly scheduled payment,  
64 including, but not limited to, utility payments, contracts and  
65 real property rental fees, may exceed this limit by an amount  
66 to be determined by the Auditor.

67 (2) The council, commission and ~~any~~ a governing board of  
68 a state institution of higher education may use a purchasing  
69 card for travel expenses directly related to the job duties of  
70 the traveling employee. Where approved by the Auditor, ~~such~~  
71 the expenses may exceed \$5000 by an amount to be deter-  
72 mined by the Auditor. Traveling expenses may include  
73 registration fees and airline and other transportation  
74 reservations, if approved by the president of the institution.  
75 Traveling expenses may ~~not include fuel or food purchases~~  
76 ~~except, the state institutions of higher education known as~~  
77 ~~Marshall University and West Virginia University may~~  
78 ~~include in traveling expenses the purchase~~ purchases of fuel  
79 and food.

80 (3) The commission, council, and governing boards ~~state~~  
81 ~~institutions known as Marshall University and West Virginia~~  
82 ~~University~~ each shall maintain one purchasing card for use  
83 only in a situation declared an emergency by the appropriate

84 chancellor or the institution's president. ~~The Council,~~  
85 ~~Commission and all other institutions shall maintain one~~  
86 ~~purchase card for use only in a situation declared an emer-~~  
87 ~~gency by the president of the institution and approved by the~~  
88 ~~appropriate chancellor.~~ Emergencies may include, but are  
89 not limited to, partial or total destruction of a ~~campus~~  
90 facility; loss of a critical component of utility infrastructure;  
91 heating, ventilation or air condition failure in an essential  
92 academic building; loss of campus road, parking lot or  
93 campus entrance; or a local, regional, or national emergency  
94 situation that has a direct impact on the campus.

95 (e) Notwithstanding ~~the provisions of~~ section ten-f, article  
96 three, chapter twelve of this code, or any other provision of  
97 this code or law to the contrary, the Auditor shall accept any  
98 receiving report submitted in a format utilizing electronic  
99 media. The Auditor shall conduct any audit or investigation  
100 of the council, commission or any institution governing  
101 board at its own expense and at no cost to the council,  
102 commission or ~~institution governing board~~.

103 (f) The council and the commission each shall maintain a  
104 rule in accordance with ~~the provisions of~~ article three-a,  
105 chapter twenty-nine-a of this code. The rule shall provide for

106 ~~institutions governing boards~~ individually or cooperatively  
107 to maximize their use of any of the following purchasing  
108 practices that are determined to provide a financial advan-  
109 tage:

110 (1) Bulk purchasing;

111 (2) Reverse bidding;

112 (3) Electronic marketplaces; and

113 (4) Electronic remitting.

114 (g) Each ~~institution governing board shall~~ may establish a  
115 consortium with at least one other ~~institution governing~~  
116 board, in the most cost-efficient manner feasible, to consoli-  
117 date the following operations and student services:

118 (1) Payroll operations;

119 (2) Human resources operations;

120 (3) Warehousing operations;

121 (4) Financial transactions;

122 (5) Student financial aid application, processing and  
123 disbursement;

124 (6) Standard and bulk purchasing; and

125 (7) Any other operation or service appropriate for consoli-  
126 dation as determined by the council or commission.

127 (h) ~~An institution~~ A governing board may charge a fee to  
128 the governing board of each institution for which it provides  
129 a service or performs an operation. The fee rate shall be in  
130 the best interest of both the institution being served and the  
131 governing board providing ~~institution~~ the service. ~~as ap-~~  
132 ~~proved by the council and commission.~~

133 (i) ~~Any community and technical college, college and~~  
134 ~~university~~ A governing board may provide the services  
135 authorized by this section for the benefit of any governmen-  
136 tal body or public or private institution.

137 (j) Each ~~institution~~ governing board shall strive to mini-  
138 mize its number of low-enrollment sections of introductory  
139 courses. To the maximum extent practicable, ~~institutions~~  
140 governing boards shall use distance learning to consolidate  
141 the course sections. ~~Marshall University, West Virginia~~  
142 ~~University,~~ The council and commission shall report the  
143 progress of reductions as requested by the Legislative  
144 Oversight Commission on Education Accountability.

145 (k) ~~An institution~~ A governing board shall use its natural  
146 resources and alternative fuel resources to the maximum  
147 extent feasible. The ~~institution~~ governing board:



148 (1) May supply the resources for its own use and for use by  
149 ~~any~~ the governing board of any other institution;

150 (2) May supply the resources to the general public at fair  
151 market value;

152 (3) Shall maximize all federal or grant funds available for  
153 research regarding alternative energy sources; and

154 (4) May develop research parks to further the purpose of  
155 this section and to expand the economic development  
156 opportunities in the state.

157 (l) Any cost-savings realized or fee procured or retained by  
158 ~~an institution~~ a governing board pursuant to ~~implementation~~  
159 ~~of the provisions of~~ this section is retained by the ~~institution~~  
160 governing board.

161 (m) ~~The provisions of subsection (b) of this section do not~~  
162 ~~apply to the state institutions known as Marshall University~~  
163 ~~and West Virginia University.~~ Each governing board is  
164 authorized, but not required, to ~~comply with the provisions~~  
165 ~~of~~ implement subsections (f), (g) and (h) of this section.

166 (1) ~~The governing boards of Marshall University and West~~  
167 ~~Virginia University, respectively, each shall promulgate a~~  
168 ~~rule on purchasing procedures pursuant to the provisions of~~

169 ~~section six, article one of this chapter. Neither institution is~~  
170 ~~subject to the rules required by subsection (f) of this section.~~

171 (2) If ~~either~~ a governing board elects to implement ~~the~~  
172 ~~provisions of said~~ subsection (g) of this section, the following  
173 conditions apply:

174 (A) (1) The governing board makes the determination  
175 regarding any additional operation or service which is  
176 appropriate for consolidation without input from the council  
177 or commission;

178 (B) (2) The governing board sets the fee charged to ~~any~~ the  
179 governing board of the institution for which it provides a  
180 service or performs an operation. The fee rate shall be in the  
181 best interest of both the institution being served and the  
182 governing board providing institution the service but it and  
183 is not subject to approval by the council or commission; and

184 (C) (3) The governing board may not implement ~~the~~  
185 ~~provisions of~~ this subdivision in a manner which supercedes  
186 the requirements established in section twelve, article three-  
187 c of this chapter.

188 (n) The governing boards of Marshall University and West  
189 Virginia University, respectively, each shall promulgate a

190 rule on purchasing procedures in accordance with section  
191 six, article one of this chapter.

**ARTICLE 7. PERSONNEL GENERALLY.**

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

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

5 (1) Providing benefits to the citizens of the State of West  
6 Virginia by supporting the public policy agenda as articu-  
7 lated by state policymakers;

8 (2) Assuring fiscal responsibility by making the best use of  
9 scarce resources;

10 (3) Promoting fairness, accountability, credibility, trans-  
11 parency and a systematic approach to progress (FACTS) in  
12 personnel decision-making;

13 (4) Reducing, or, wherever possible, eliminating arbitrary  
14 and capricious decisions affecting employees of higher  
15 education organizations as defined in section two, article  
16 nine-a of this chapter;

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

19 (6) Providing for institutional flexibility with meaningful  
20 accountability;

21 (7) Adhering to federal and state laws;

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

23 (9) Implementing best practices throughout the state higher  
24 education system.

25 (b) To accomplish these goals, the Legislature encourages  
26 organizations to pursue a human resources strategy which  
27 provides monetary and nonmonetary returns to employees in  
28 exchange for their time, talents and efforts to meet articu-  
29 lated goals, objectives and priorities of the state, the commis-  
30 sion and council, and the organization. The system should  
31 maximize the recruitment, motivation and retention of  
32 highly qualified employees, ensure satisfaction and engage-  
33 ment of employees with their jobs, ensure job performance  
34 and achieve desired results.

**§18B-7-2. Definitions.**

1 For the purposes of this article and articles eight, nine and  
2 nine-a of this chapter, the following words have the mean-  
3 ings ascribed to them unless the context clearly indicates a  
4 different meaning:

5 (a) “Benefits” means programs that an employer uses to  
6 supplement the cash compensation of employees and in-  
7 cludes health and welfare plans, retirement plans, pay for  
8 time not worked and other employee perquisites.

9 (b) “Compensation” means cash provided by an employer  
10 to an employee for services rendered.

11 (c) “Compensatory time” and “compensatory time off”  
12 mean hours during which the employee is not working,  
13 which are not counted as hours worked during the applicable  
14 work week or other work period for purposes of overtime  
15 compensation and for which the employee is compensated at  
16 the employee’s regular rate of pay.

17 (d) “Employee classification” or “employee class” means  
18 those employees designated as classified employees;  
19 nonclassified employees, including presidents, chief execu-  
20 tives and top level administrators and faculty as these terms  
21 are defined in this article and articles eight, nine and nine-a  
22 of this chapter.

23 (e) “Health and welfare benefit plan” means an arrange-  
24 ment which provides any of the following: Medical, dental,  
25 visual, psychiatric or long-term health care, life insurance,

26 accidental death or dismemberment benefits, disability  
27 benefits or comparable benefits.

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

32 (g) "Relative market status" means the calculated relation-  
33 ship between the average salary of each employee classifica-  
34 tion and its peer group.

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

1 (a) Definitions for terms used in this section have the  
2 meanings ascribed to them in section two, article one of this  
3 chapter and section two, article nine of this chapter, except  
4 that, unless clearly noted otherwise, this section applies only  
5 to an employee:

6 (1) Who is classified and whose employment, if continued,  
7 accumulates to a minimum total of one thousand forty hours  
8 during a calendar year and extends over at least nine months  
9 of a calendar year; or

10 (2) Who is transferred involuntarily to a position in  
11 nonclassified status for which he or she did not apply. Any  
12 classified employee involuntarily transferred to a position in  
13 nonclassified status may exercise the rights set out in this  
14 section only for positions equivalent to or lower than the last  
15 job class the employee held.

16 (b) All decisions by an organization or its agents concern-  
17 ing reductions in workforce of full-time classified employees,  
18 whether by temporary furlough or permanent termination,  
19 shall be made in accordance with this section.

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

26 (2) If the organization desires to lay off a more senior  
27 employee, it shall demonstrate that the senior employee  
28 cannot perform any other job duties held by less senior  
29 employees of that organization in the same job class or any  
30 other equivalent or lower job class for which the senior  
31 employee is qualified. If an employee refuses to accept a

32 position in a lower job class, the employee retains all rights  
33 of recall provided in this section.

34 (3) If two or more employees accumulate identical senior-  
35 ity, the priority is determined by a random selection system  
36 established by the employees and approved by the organiza-  
37 tion.

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

42 (1) An employee's listing with an organization remains  
43 active for a period of one calendar year from the date of  
44 termination or furlough or from the date of the most recent  
45 renewal. If an employee fails to renew the listing with the  
46 organization, the employee's name may be removed from the  
47 list.

48 (2) An employee placed upon the preferred recall list shall  
49 be recalled to any position opening by the organization  
50 within the classifications in which the employee had previ-  
51 ously been employed or to any lateral position for which the  
52 employee is qualified.



53 (3) An employee on the preferred recall list does not forfeit  
54 the right to recall by the organization if compelling reasons  
55 require the employee to refuse an offer of reemployment by  
56 the organization.

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

60 (1) The notice shall be sent by certified mail to the last  
61 known address of the employee. It is the duty of each  
62 employee listed to notify the organization of any change in  
63 address and to keep the listing with the organization current.

64 (2) A position opening may not be filled by the organiza-  
65 tion, whether temporary or permanent, until all employees  
66 on the preferred recall list have been properly notified of  
67 existing vacancies and have been given an opportunity to  
68 accept reemployment.

69 (e) A nonexempt classified employee is one to whom the  
70 provisions of the federal Fair Labor Standards Act, as  
71 amended, apply. A nonexempt classified employee, who  
72 applies and meets the minimum qualifications for a nonex-  
73 empt job opening at the organization where currently  
74 employed, whether the job is a lateral transfer or a promo-

75 tion, shall be transferred or promoted before a new person is  
76 hired.

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

80 (2) This subsection applies to any nonexempt classified  
81 employee, including one who has not accumulated a mini-  
82 mum total of one thousand forty hours during the calendar  
83 year and one whose contract does not extend over at least  
84 nine months of a calendar year.

85 (3) If more than one qualified, nonexempt classified  
86 employee applies, the best-qualified nonexempt classified  
87 employee is awarded the position. In instances where the  
88 classified employees are equally qualified, the nonexempt  
89 classified employee with the greatest amount of continuous  
90 seniority at that organization is awarded the position.

91 (f) In addition to any other information required, applica-  
92 tions for employment by personnel governed by this section  
93 shall include each applicant's social security number.

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

97 (1) An employee at an organization under the jurisdiction  
98 of the council may not displace an employee of an organiza-  
99 tion under the jurisdiction of the commission.

100 (2) An employee at an organization under the jurisdiction  
101 of the commission may not displace an employee of an  
102 organization under the jurisdiction of the council.

103 (3) An employee performing a dual service for a formerly  
104 administratively linked community and technical college and  
105 a former sponsoring institution under the jurisdiction of the  
106 commission is an employee of the institution under the  
107 jurisdiction of the commission if that institution receives a  
108 fee from the community and technical college for the service  
109 performed by the employee.

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

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

4 (b) An organization may make additional periodic deduc-  
5 tions from the salary payments due employees in the amount  
6 they are required to contribute for any supplemental health  
7 and welfare plan.

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

1 (a) Any reference in this code to the “additional retirement  
2 plan” relating to state higher education employees, means  
3 the “higher education retirement plan” provided in this  
4 section. Any state higher education employee participating  
5 in a retirement plan upon the effective date of this section  
6 continues to participate in that plan and may not elect to  
7 participate in any other state retirement plan. Any retire-  
8 ment plan continues to be governed by the provisions of law  
9 applicable on the effective date of this section.

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

18 (c) The commission, council and governing boards may  
19 contract for supplemental retirement plans for any or all of  
20 their employees to supplement the benefits employees  
21 otherwise receive. The commission, council and governing  
22 boards may make additional periodic deductions from the  
23 salary payments due the employees in the amount they are  
24 required to contribute for the supplemental retirement plan.

25 (d) An organization, by way of additional compensation to  
26 their employees, shall pay an amount, which, at a minimum,  
27 equals the contributions of the employees into the higher  
28 education retirement plan from funds appropriated to the  
29 commission, council or governing board for personal ser-  
30 vices.

31 (e) As part of an overall compensation plan, the commis-  
32 sion, council or a governing board, each at its sole discretion,  
33 may increase its contributions to any employee retirement  
34 plan to an amount that exceeds the contributions of employ-  
35 ees.

36 (f) Each participating employee has a full and immediate  
37 vested interest in the retirement and death benefits accrued  
38 from all the moneys paid into the Higher Education Retire-  
39 ment Plan or a supplemental retirement plan for his or her

40 benefit. Upon proper requisition of a governing board, the  
41 commission or council, the Auditor periodically shall issue  
42 a warrant, payable as specified in the requisition, for the  
43 total contributions so withheld from the salaries of all  
44 participating employees and for the matching funds of the  
45 commission, council or governing board.

46 (g) Any person whose employment commences on or after  
47 July 1, 1991, and who is eligible to participate in the Higher  
48 Education Retirement Plan, shall participate in that plan  
49 and is not eligible to participate in any other state retirement  
50 system: *Provided*, That the foregoing provision does not  
51 apply to a person designated as a 21st Century Learner  
52 Fellow pursuant to section eleven, article three, chapter  
53 eighteen-a of this code. The additional retirement plan  
54 contracted for by the governing boards prior to July 1, 1991,  
55 remains in effect unless changed by the commission. Nothing  
56 in this section considers employees of the council or govern-  
57 ing boards as employees of the commission, nor is the  
58 commission responsible or liable for retirement benefits  
59 contracted by, or on behalf of, the council or governing  
60 boards.

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

1 (a) Each higher education organization shall establish and  
2 operate an employee continuing education and development  
3 program under a joint rule or rules promulgated by the  
4 commission and council in accordance with article three-a,  
5 chapter twenty-nine-a of this code. Funds allocated or made  
6 available for employee continuing education and develop-  
7 ment may be used to compensate and pay expenses for  
8 faculty or classified employees pursuing additional academic  
9 study or training to equip themselves better for their duties.

10 The rules shall encourage continuing education and staff  
11 development and shall require that employees be selected on  
12 a nonpartisan basis using fair and meaningful criteria which  
13 afford all employees opportunities to enhance their skills.  
14 These rules also may include reasonable provisions for the  
15 continuation or return of any faculty or classified employee  
16 receiving the benefits of the education or training, or for  
17 reimbursement by the state for expenditures incurred on  
18 behalf of the faculty member or classified employee.

19 (b) Subject to legislative appropriation therefor, the  
20 commission and council shall provide additional, regular,  
21 training and professional development for employees

22 engaged in human resources-related activities at all organi-  
23 zations. The training and professional development:

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

26 (2) Shall be in addition to and may not supplant the  
27 training and professional development regularly provided to  
28 any class of employees by each organization prior to the  
29 effective date of this section.

**§18B-7-7. Employment practices.**

1 (a) Each governing board, with the advice and assistance  
2 of the staff council, shall promulgate and adopt a rule  
3 regarding the role of part-time classified employees. The rule  
4 shall discourage the hiring of part-time employees solely to  
5 avoid the payment of benefits or in lieu of full-time employ-  
6 ees and shall provide all qualified classified employees who  
7 hold nine-month or ten-month contracts with the opportu-  
8 nity to accept part-time or full-time summer employment  
9 before new persons are hired for the part-time or full-time  
10 employment.

11 (b) Each governing board, with the advice and assistance  
12 of the staff councils and other groups representing classified  
13 employees, shall promulgate and adopt a rule in accordance



14 with section six, article one of this chapter that discourages  
15 temporary, nonemergency, institutionally-imposed changes  
16 in an employee's work schedule; that maintains reasonable  
17 continuity in working schedules and conditions for employ-  
18 ees; and that requires institutions to consider feasible and  
19 innovative ways to use the institution's classified employees  
20 most efficiently. These innovations may include, but are not  
21 limited to, flexibility in employee scheduling, job-sharing  
22 and four-day work weeks.

**§18B-7-8. Reporting.**

1 (a) *Implementation reports.* —

2 For the fiscal years commencing on July 1, 2011, and July  
3 1, 2012, the commission and council jointly shall report to  
4 the Legislative Oversight Commission on Education Ac-  
5 countability once during each six-month period on their  
6 progress in designing, developing, implementing and admin-  
7 istering the personnel classification and compensation  
8 system established by this article and articles eight, nine and  
9 nine-a of this chapter. The initial report is due December 1,  
10 2011, and shall include, but is not limited to, the following  
11 information:

12 (1) A summary of findings generated by the human re-  
13 sources review conducted pursuant to section nine of this  
14 article;

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

17 (3) A systematic plan, including a time line, for designing,  
18 developing, and implementing the classification and com-  
19 pensation system contained in this article and articles eight,  
20 nine and nine-a of this chapter;

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

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

28 (6) Detailed data disaggregated by organization and  
29 employee category or classification, comparing funding for  
30 salaries of faculty, classified employees and nonclassified  
31 employees as a percentage of the average funding for each of  
32 these classes or categories of employees among the organiza-  
33 tion's peers, in regional or national markets, as appropriate,

34 and among similar organizations within the state systems of  
35 public higher education; and

36 (7) Other data requested by the Legislature or considered  
37 appropriate by the commission or council.

38 (b) *Annual personnel reports.* —

39 (1) No later than December 1, 2013, and annually thereaf-  
40 ter, the commission and council shall report to the Legisla-  
41 tive Oversight Commission on Education Accountability  
42 addressing the following issues:

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

47 (B) Detailed data disaggregated by organization and  
48 employee category or classification, comparing funding for  
49 salaries of faculty, classified employees and nonclassified  
50 employees as a percentage of the average funding for each of  
51 these classes or categories of employees among the organiza-  
52 tion's peers, in the state, region or national markets, as  
53 appropriate, and among similar organizations within the  
54 state systems of public higher education.

55 (2) The commission and council shall prepare a human  
56 resources report card summarizing the performance of  
57 organizations on key human resources measures. The report  
58 card shall be presented to the Legislative Oversight Commis-  
59 sion on Education Accountability no later than December 1,  
60 2012, and annually thereafter, and shall be made available  
61 to the general public. At a minimum, the human resources  
62 report card shall contain the following data:

63 (A) Human resources department metrics by organization:

64 (i) Number of human resources staff;

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

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

69 (iv) Number of positions reporting to the head of human  
70 resources;

71 (v) Areas of human resources functions outsourced to  
72 external entities;

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

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

75 (B) Human resources expense data:

76 (i) Ratio of human resources expenses to operating ex-  
77 penses;

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

80 (iii) Total human resources expense per organization  
81 employee.

82 (C) Compensation data:

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

85 (ii) Total amount of organization employee salaries as a  
86 percent of operating expenses;

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

89 (D) System metrics:

90 (i) Comparisons of faculty salaries at each organization to  
91 market averages;

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

94 (E) An account of the total amount, type of training or  
95 professional development provided, the number of employees  
96 who participated and the overall cost of the training and

97 professional development provided to employees pursuant to  
98 section six of this article; and

99 (F) Other measures the commission or council considers  
100 appropriate to assist policymakers in evaluating the degree  
101 of success in implementing best human resources practices  
102 by higher education organizations.

103 (c) *Job classification system report.* —

104 By July 1, 2014, and at least once within each five-year  
105 period thereafter, the commission and council jointly shall  
106 review the effectiveness of the system for classifying jobs and  
107 submit an in-depth report to the Legislative Oversight  
108 Commission on Education Accountability. The report shall  
109 include, but is not limited to, findings, recommendations and  
110 supporting documentation regarding the following job  
111 classification issues:

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

114 (B) The status of the job evaluation plan, including the  
115 factors used to classify jobs or their relative values, and a  
116 determination of whether the plan should be adjusted.

117 (d) It is the responsibility of the head of human resources  
118 for each organization to prepare and submit to the president

119 or chief executive officer all human resources data requested  
120 by the commission and council. The president or executive  
121 officer of each organization shall submit the requested data  
122 at times established by the commission and council.

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

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

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

**§18B-7-9. Human resources reviews.**

1 (a) The commission and council jointly shall conduct an  
2 initial human resources review of each organization to be  
3 carried out, subject to legislative appropriation, by an  
4 external vendor possessing experience and expertise in  
5 conducting these reviews. The initial review shall be com-  
6 pleted by October 1, 2011, and shall be designed to compare

7 current human resources practices at each organization to  
8 best practices, to identify areas of strength or deficiency, to  
9 identify functions that should be the responsibility of the  
10 human resources department, but are incorrectly assigned or  
11 carried out by other offices within each organization, to  
12 assist in targeting employee training and development, to  
13 determine the degree to which organizations are adhering to  
14 state and federal laws related to human resources adminis-  
15 tration and to provide data necessary to guide policymakers  
16 in developing personnel rules and implementing the classifi-  
17 cation and compensation system.

18 (b) Following completion of the initial human resources  
19 review, the commission and council jointly shall conduct a  
20 systematic human resources review of each organization at  
21 least once within each five-year period.

22 (1) The review shall focus on correcting areas of deficiency  
23 identified by previous reviews, on compliance with statutory  
24 mandates contained in this article and articles eight, nine  
25 and nine-a of this chapter and on adherence to personnel  
26 rules of the commission and council.

27 (2) In the absence of special circumstances, the commission  
28 and council shall provide organizations with reasonable



29 notice prior to conducting a human resources review and  
30 shall identify the subjects to be examined in the review.

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

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

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

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

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

17 (b) An employee may accrue up to four hundred eighty  
18 hours of compensatory time if the employee's work is a

19 public safety activity, an emergency response activity or a  
20 seasonal activity. An employee engaged in other work may  
21 accrue up to two hundred forty hours of compensatory time.  
22 An employee who has accrued four hundred eighty or two  
23 hundred forty hours of compensatory time, as the case may  
24 be, shall be paid overtime compensation for additional hours  
25 of work. If compensation is paid to an employee for accrued  
26 compensatory time, the compensation shall be paid at the  
27 regular rate earned by the employee at the time the employee  
28 received the payment.

29 (c) If employment is terminated, an employee who has  
30 accrued compensatory time pursuant to this section, shall be  
31 paid for the unused compensatory time at a rate of compen-  
32 sation not less than the higher amount calculated using one  
33 of the following formulas:

- 34 (1) The average regular rate received by the employee  
35 during the first three years of the employee's employment; or  
36 (2) The final regular rate received by the employee.

37 (d) An employee who has accrued compensatory time as  
38 authorized by this section, and who has requested the use of  
39 compensatory time, shall be permitted by the employer to use  
40 this time within a reasonable period after making the request

41 if the use of the compensatory time does not unduly disrupt  
42 the operation of the employing agency. Compensatory time  
43 must be used within one year from the time it is accrued.

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

1 (a) Notwithstanding any provision of this code to the  
2 contrary, by July 1, 2015, the percentage of personnel placed  
3 in the category of “nonclassified” at a higher education  
4 organization may not exceed twenty percent of the total  
5 number of classified and nonclassified employees of that  
6 organization as those terms are defined in section two,  
7 article nine-a of this chapter and who are eligible for  
8 membership in a state retirement system of the State of West  
9 Virginia or other retirement plan authorized by the state,  
10 except as set forth in subsection (c) of this section.

11 (b) A higher education organization which has more than  
12 twenty percent of its employees placed in the category of  
13 “nonclassified” as defined by subsection (a) of this section on  
14 July 1, 2011, shall reduce the number of nonclassified  
15 employees to no more than twenty-five percent by July 1,  
16 2013, and to no more than twenty percent by July 1, 2015.

17 (c) For the purposes of determining the ratio of  
18 nonclassified employees pursuant to this section, the follow-  
19 ing conditions apply:

20 (1) Employees of the commission and the chancellor for  
21 higher education and employees of the council and the  
22 chancellor for community and technical college education  
23 are considered as one organization;

24 (2) Organizations may count as faculty or classified  
25 employees, respectively, administrators who retain the right  
26 to return to faculty or classified employee positions;

27 (3) Athletic coaches are excluded from calculation of the  
28 ratio. The commission and the council shall include consider-  
29 ation of this employee category in each review required by  
30 section nine of this article and shall monitor organizations'  
31 use of this category and include this information in the  
32 reports required by subsections (a) and (b), section eight of  
33 this article; and

34 (4) The governing board of Marshall University or West  
35 Virginia University may place up to twenty-five percent of  
36 the total number of classified and nonclassified employees of  
37 that organization in the category of "nonclassified" under  
38 the following conditions:

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

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

44 (d) The Vice Chancellor for Human Resources shall monitor  
45 the progress of the organizations in meeting the deadlines  
46 established in this section and shall report periodically to the  
47 commission and council. The commission and council shall  
48 make a preliminary compliance report to the Legislative  
49 Oversight Commission on Education Accountability by  
50 September 1, 2013, and a final report on organization  
51 compliance to that body by September 1, 2015.

52 (e) No nonclassified employee shall have his or her current  
53 annual salary reduced if his or her position is redefined as a  
54 classified position solely to meet the requirements of this  
55 section. If such a nonclassified employee is reclassified, his  
56 or her salary shall not constitute evidence of inequitable  
57 compensation in comparison to other employees in the same  
58 paygrade.

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

1 In accordance with duly promulgated rules of the govern-  
2 ing board and the commission or council, as appropriate, the  
3 president of an organization, or his or her designated  
4 representative, and a classified employee at the organization  
5 may agree mutually on duties to be performed by the  
6 employee in addition to those duties listed in the job descrip-  
7 tion. The written agreement shall describe the additional  
8 duties to be performed, the length of time the agreement  
9 shall be in force and the additional compensation to be paid.  
10 These terms and conditions shall be agreed upon by the  
11 president and the classified employee and shall be signed by  
12 both parties to the agreement and filed with the appropriate  
13 governing board.

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

1 Each full-time classified employee hired by an organiza-  
2 tion shall serve an initial probationary period of six months.  
3 At the end of the probationary period, the employee shall  
4 receive a written evaluation of his or her performance. The  
5 employee's supervisor shall meet with the employee and  
6 explain the contents of the evaluation and whether the  
7 employee is being offered regular employment.

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

1 (a) For the purposes of this section, "employee" means  
2 either of the following:

3 (1) A classified or nonclassified employee who is employed  
4 by a higher education governing board, by the commission or  
5 by the council; or

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

8 (b) An employee may donate sick and annual leave to a  
9 leave bank established and operated in accordance with  
10 subsection (d) of this section or directly to another employee  
11 in accordance with subsection (e) of this section. No em-  
12 ployee may be compelled to donate sick or annual leave. Any  
13 leave donated by an employee pursuant to this section shall  
14 be used only for the purpose of catastrophic illness or injury  
15 as defined in subsection (c) of this section and shall reduce,  
16 to the extent of such donation, the number of days of annual  
17 or sick leave to which the employee is entitled.

18 (c) For the purpose of this section, a catastrophic illness or  
19 injury is one that is expected to incapacitate the employee  
20 and create a financial hardship because the employee has

21 exhausted all sick and annual leave and other paid time off.  
22 Catastrophic illness or injury also includes an incapacitated  
23 immediate family member as defined by a governing board,  
24 the commission or the council, as appropriate, if this results  
25 in the employee being required to take time off from work  
26 for an extended period of time to care for the family member  
27 and if the employee has exhausted all sick and annual leave  
28 and other paid time off.

29 (d) A leave bank or banks may be established at each state  
30 institution of higher education, the commission or the  
31 council to which employees may donate either sick or annual  
32 leave. The bank or banks may be established jointly by the  
33 policy commission and the governing boards or may be  
34 established for the commission, the council, and each of the  
35 governing boards. Sick or annual leave may be deposited in  
36 the leave bank, and shall be reflected as a day-for-day  
37 deduction from the sick or annual leave balance of the  
38 depositing employee.

39 Donated leave may be withdrawn by any employee  
40 experiencing a catastrophic illness or injury when the  
41 following conditions are met:



42 (1) The president of the institution or the chancellor of the  
43 commission or the council, as appropriate, verifies that the  
44 employee is unable to work due to the catastrophic illness or  
45 injury; and

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

49 The withdrawal shall be reflected as a day-for-day addi-  
50 tion to the leave balance of the withdrawing employee.

51 (e) Sick or annual leave may be donated to an employee  
52 experiencing a catastrophic illness or injury. The leave shall  
53 be donated at the request of the employee after appropriate  
54 verification that the employee is unable to work due to the  
55 catastrophic illness or injury as determined by the president  
56 of the institution or the appropriate chancellor. When  
57 transfer of sick or annual leave is approved by the president  
58 of the institution or the appropriate chancellor, any em-  
59 ployee may donate sick or annual leave in one-day incre-  
60 ments by providing written notice to the personnel office.  
61 Donations shall be reflected as a day-for-day deduction from  
62 the sick or annual leave balance of the donating employee.  
63 An employee receiving the donated sick or annual leave shall

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

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

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

75 (2) An employee withdrawing or receiving donations of  
76 sick or annual leave pursuant to this section shall use any  
77 leave personally accrued on a monthly basis prior to receiv-  
78 ing additional donated sick or annual leave.

79 (g) Donated sick or annual leave deposited in an institu-  
80 tional leave bank or transferred under subsection (d) of this  
81 section may be inter-institutional in accordance with the  
82 policies of the appropriate governing board. Each institution,  
83 the commission or the council is responsible for the adminis-  
84 tration of the sick or annual leave deposits, withdrawals and  
85 transfers of its employees. Rules implementing the provisions

86 of this section may be adopted jointly or separately by the  
87 governing boards, the commission or the council in accor-  
88 dance with section six, article one of this chapter and, in the  
89 case of the commission and council, in accordance with  
90 article three-a, chapter twenty-nine-a of this code.

**§18B-7-15. Merit increases.**

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

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

1 (a) The commission and council shall study the following  
2 issues relating to employment practices:  
3 (1) Developing a fair and rational policy based upon best  
4 human resources practices for covering reductions in force,  
5 furloughs and other issues relating to seniority including  
6 determining how employees shall be treated whose salaries  
7 are derived from funds other than state appropriations;  
8 (2) Determining the advantages and disadvantages of  
9 maintaining the internal preferences for hiring, promoting  
10 and transferring classified employees;

11 (3) Collecting and analyzing data and developing recom-  
12 mendations on the advantages and disadvantages of  
13 outsourcing certain functions at the organization level. The  
14 data shall include, but are not limited to, the following items:

15 (A) A current database of outsourcing practices followed  
16 by each organization including procedures or rules devel-  
17 oped to inform policy decisions;

18 (B) The total number, disaggregated by organization, of  
19 positions or services being outsourced or filled by temporary  
20 employees;

21 (C) The amount of actual cost savings, if any, that are  
22 realized or may be realized as a direct result of organiza-  
23 tions' outsourcing decisions;

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

28 (b) The commission and council shall complete the work  
29 and report their findings, conclusions and recommendations,  
30 together with drafts of any legislation necessary to effectuate  
31 the recommendations, to the Legislative Oversight Commis-

32 sion on Education Accountability no later than January 1,  
33 2012.

**ARTICLE 8. HIGHER EDUCATION FACULTY.**

**§18B-8-1. Definitions.**

1 As used in this article:

2 (a) “Academic rank”, “rank” or “faculty rank” means the  
3 position held by a faculty member as determined by the  
4 president, consistent with a rule promulgated and adopted  
5 by the governing board, and includes the positions of  
6 professor, associate professor, assistant professor and  
7 instructor. All other ranks are excluded from the provisions  
8 of this article.

9 (b) “Salary” means the total nine-month or ten-month  
10 salary paid from state funds to a full-time faculty member,  
11 or if the employment period is other than nine or ten months,  
12 the total salary adjusted to a nine-month base salary;

13 (c) “Full-time faculty” means a faculty member so desig-  
14 nated by the president, consistent with the duly promulgated  
15 and adopted rule of the appropriate governing board, and  
16 those persons with faculty rank who have research or  
17 administrative responsibilities.

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

1 (a) Each governing board shall promulgate and adopt a  
2 faculty salary rule in accordance with section six, article one  
3 of this chapter which furthers the goals of attracting,  
4 retaining and rewarding high quality faculty. Faculty salary  
5 increases shall be distributed within each organization in  
6 accordance with the faculty salary rule.

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

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

10 (1) The salary of each full-time faculty member within a  
11 discipline group is competitive with those in similar disci-  
12 plines at peer institutions;

13 (2) Faculty are recognized for outstanding performance;

14 (3) Equity among salaries is maintained; and

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

17 (d) Each faculty member shall receive a salary increase of  
18 at least ten percent when he or she is promoted in rank.

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

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

22 member on sabbatical leave is paid by the institution where  
23 employed from its regular personal services appropriations.

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

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

9 (1) The absence is approved by the president of the state  
10 institution of higher education by which the professional is  
11 employed;

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

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

17 (b) An individual who remains in governmental employ-  
18 ment with leave granted in accordance with this section  
19 forfeits all rights to academic tenure, rank and position



20 formerly held at the employing institution at the end of the  
21 eighth year of government employment.

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

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

7 (b) The president of each state institution of higher  
8 education shall give written notice concerning retention or  
9 nonretention for the ensuing academic year to a probation-  
10 ary faculty member not later than March 1.

11 (c) If a probationary faculty member who is not retained so  
12 requests, the president or his or her designee shall inform the  
13 probationary faculty member by certified mail within ten  
14 days of the reasons for nonretention. A probationary faculty  
15 member who desires to appeal the decision may proceed to  
16 level three of the grievance procedure established in article  
17 two, chapter six-c of this code. If the administrative law  
18 judge decides that the reasons for nonretention are arbitrary,

19 capricious or without a factual basis, the faculty member  
20 shall be retained for the ensuing academic year.

**§18B-8-6. Faculty employment practices; campus administrators  
required to teach or perform research.**

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

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

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

**ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE SALARY  
SCHEDULE; CLASSIFICATION AND COMPENSA-  
TION SYSTEM.**

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

1 (a) The purpose of the Legislature in enacting this article  
2 is to require the commission and council jointly to imple-  
3 ment, control, supervise and manage a complete, uniform

4 system of personnel classification and compensation in  
5 accordance with the provisions of this article for classified  
6 employees at higher education organizations.

7 (b) It is the intent of the Legislature to require each higher  
8 education organization to achieve full funding of the salary  
9 schedule established in section three of this article. A higher  
10 education organization, as defined in section two, article  
11 nine-a of this chapter, is subject to the provisions of this  
12 article until full funding is reached.

13 (c) It is further the intent of the Legislature to encourage  
14 strongly that each organization dedicate a portion of future  
15 tuition increases to fund the classified salary schedule and,  
16 after full funding of the salary schedule is achieved, to move  
17 toward meeting salary goals for faculty, classified and  
18 nonclassified employees.

**§18B-9-2. Definitions.**

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

3 (a) “Classified employee” or “employee” means a regular  
4 full-time or regular part-time employee of an organization  
5 who holds a position that is assigned a particular job title  
6 and pay grade in accordance with the personnel classifica-

7 tion and compensation system established by this article or  
8 by the commission and council;

9 (b) "Job description" means the specific listing of duties  
10 and responsibilities as determined by the appropriate  
11 governing board, the commission or council and associated  
12 with a particular job title;

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

15 (d) "Pay grade" means the number assigned by the com-  
16 mission and council to a particular job title and refers to the  
17 vertical column heading of the salary schedule established in  
18 section three of this article;

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

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

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

30 (h) “Years of experience” means the number of years a  
31 person has been an employee of the State of West Virginia  
32 and refers to the horizontal column heading of the salary  
33 schedule established in section three of this article. For the  
34 purpose of placement on the salary schedule, employment for  
35 nine months or more equals one year of experience, but a  
36 classified employee may not accrue more than one year of  
37 experience during any given fiscal year. Employment for less  
38 than full time or for fewer than nine months during any  
39 fiscal year shall be prorated. In accordance with rules  
40 established by the commission and council jointly, a classi-  
41 fied employee may be granted additional years of experience  
42 not to exceed the actual number of years of prior, relevant  
43 work or experience at accredited institutions of higher  
44 education other than state institutions of higher education.

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

1 (a) There is hereby continued a temporary state annual  
2 salary schedule for classified employees consisting of a  
3 minimum annual salary for each pay grade in accordance  
4 with years of experience. Nothing in this article guarantees  
5 payment to a classified employee of the salary indicated on

6 the schedule at the actual years of experience. The minimum  
7 salary herein indicated shall be prorated for classified  
8 employees working fewer than thirty-seven and one-half  
9 hours per week. For the purposes of this article and article  
10 nine-a, despite any differences in salaries that may occur, a  
11 classified employee is equitably compensated in relation to  
12 other classified employees in the same pay grade if the  
13 following conditions exist:

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

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

20 (b) Nothing in this section requires an appropriation by the  
21 Legislature in excess of the legislative funding priorities as  
22 set forth in this chapter.

23 (c) For purposes of this article, an organization has  
24 achieved full funding of the temporary salary schedule  
25 established by this section when it provides, in total, one  
26 hundred percent of the funds needed to meet the salary  
27 funding target as calculated in October, 2010, in a report,  
28 required by a prior enactment of this section, and presented

29 to the Legislative Oversight Commission on Education  
30 Accountability. Until an organization has achieved full  
31 funding as described and has received certification to this  
32 effect from the commission or council, as appropriate, the  
33 following requirements apply:

34 (1) Classified salary increases distributed within the  
35 organization shall be provided in accordance with the  
36 uniform classification and compensation system established  
37 by this article and rules of the commission and council and  
38 shall be applied toward achieving full funding of the tempo-  
39 rary salary schedule; and

40 (2) An organization may not provide discretionary salary  
41 increases, including merit or performance-based increases,  
42 to the president or chief executive officer of an organization  
43 or to any group or class of employees within the organiza-  
44 tion, other than classified employees, unless the organization  
45 has achieved full funding of the salary schedule established  
46 in this section or is making appropriate progress toward  
47 achieving full funding of the salary schedule.

48 (A) This prohibition does not apply to salary increases  
49 mandated by law or funded by the Legislature.

50 (B) For the purposes of subdivision (2) of this subsection,  
51 “appropriate progress” has the following meanings:

52 (i) For governing boards under the jurisdiction of the  
53 commission, appropriate progress means an organization has  
54 funded at least twenty-five percent of the amount needed to  
55 reach full funding of the salary schedule by July 1, 2012 as  
56 calculated pursuant to this subsection; has funded at least  
57 fifty percent of the calculated amount by July 1, 2013; has  
58 funded at least seventy-five percent of the calculated amount  
59 by July 1, 2014 and has funded one hundred percent of the  
60 calculated amount by July 1, 2015; and

61 (ii) For governing boards under the jurisdiction of the  
62 council, appropriate progress means an organization has  
63 funded at least twenty-five percent of the amount needed to  
64 reach full funding of the salary schedule by July 1, 2013 as  
65 calculated pursuant to this subsection; has funded at least  
66 fifty percent of the calculated amount by July 1, 2014; has  
67 funded at least seventy-five percent of the calculated amount  
68 by July 1, 2015 and has funded one hundred percent of the  
69 calculated amount by July 1, 2016.

70 **TEMPORARY HIGHER EDUCATION**

71 **CLASSIFIED EMPLOYEE**

72 **ANNUAL SALARY SCHEDULE**

73 **YEARS OF EXPERIENCE**



74	<b>PAY</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
75	<b>GRADE</b>						
76	1	12,809	13,094	13,385	13,677	13,968	14,274
77	2	13,465	13,764	14,070	14,376	14,696	15,017
78	3	14,164	14,478	14,798	15,133	15,483	15,832
79	4	14,908	15,250	15,599	15,949	16,313	16,692
80	5	15,696	16,066	16,444	16,837	17,231	17,624
81	6	16,556	16,954	17,362	17,784	18,207	18,644
82	7	17,489	17,915	18,352	18,804	19,255	19,721
83	8	18,495	18,949	19,416	19,896	20,391	20,901
84	9	19,559	20,056	20,566	21,091	21,615	22,168
85	10	19,916	20,421	20,938	21,484	22,029	22,602
86	11	21,107	21,665	22,239	22,812	23,400	24,015
87	12	22,436	23,022	23,624	24,253	24,896	25,554
88	13	23,837	24,477	25,134	25,805	26,505	27,218
89	14	25,363	26,057	26,771	27,498	28,253	29,022
90	15	27,015	27,764	28,533	29,330	30,141	30,981
91	16	28,821	29,624	30,449	31,316	32,197	33,092
92	17	30,767	31,638	32,533	33,470	34,421	35,400
93	18	32,868	33,820	34,799	35,806	36,841	37,904
94	19	37,613	38,718	39,855	41,022	42,219	43,460
95	20	40,265	41,471	42,712	43,984	45,301	46,647
96	21	43,171	44,478	45,824	47,216	48,637	50,103
97	22	46,332	47,754	49,220	50,731	52,272	53,873
98	23	49,777	51,330	52,931	54,561	56,252	58,002
99	24	53,552	55,234	56,970	58,750	60,605	62,505
100	25	57,462	59,483	61,383	63,328	65,348	67,427

101	<b>PAY</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
102	<b>GRADE</b>						
103	1	14,580	14,900	15,221	15,541	15,876	16,226
104	2	15,352	15,687	16,036	16,386	16,750	17,129
105	3	16,182	16,546	16,925	17,304	17,697	18,090
106	4	17,085	17,478	17,872	18,279	18,702	19,139
107	5	18,046	18,469	18,906	19,343	19,794	20,260
108	6	19,081	19,547	20,013	20,479	20,974	21,469
109	7	20,202	20,697	21,192	21,717	22,241	22,780
110	8	21,411	21,950	22,489	23,042	23,610	24,193
111	9	22,722	23,290	23,887	24,484	25,096	25,737
112	10	23,176	23,763	24,379	25,008	25,638	26,295
113	11	24,645	25,288	25,945	26,617	27,316	28,015
114	12	26,225	26,924	27,638	28,365	29,120	29,890
115	13	27,945	28,701	29,470	30,267	31,078	31,918
116	14	29,806	30,631	31,470	32,323	33,204	34,114
117	15	31,834	32,715	33,624	34,561	35,512	36,505
118	16	34,030	34,981	35,974	36,981	38,030	39,093
119	17	36,421	37,456	38,519	39,624	40,757	41,918
120	18	39,009	40,142	41,303	42,506	43,736	44,995
121	19	44,747	46,064	47,410	48,801	50,238	51,719
122	20	48,038	49,460	50,941	52,452	54,023	55,623
123	21	51,614	53,170	54,786	56,431	58,137	59,902
124	22	55,534	57,224	58,975	60,785	62,640	64,555
125	23	59,797	61,653	63,568	65,527	67,562	69,656
126	24	64,465	66,485	68,579	70,734	72,948	75,237
127	25	69,567	71,781	74,070	76,419	78,842	81,356

	<b>PAY</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>
128					
129	<b>GRADE</b>				
130	1	16,575	16,939	17,304	17,682
131	2	17,507	17,886	18,294	18,687
132	3	18,498	18,920	19,343	19,780
133	4	19,576	20,027	20,493	20,959
134	5	20,741	21,222	21,717	22,227
135	6	21,994	22,518	23,057	23,596
136	7	23,334	23,902	24,484	25,081
137	8	24,805	25,416	26,043	26,684
138	9	26,378	27,048	27,732	28,417
139	10	26,980	27,666	28,379	29,106
140	11	28,757	29,498	30,267	31,064
141	12	30,687	31,498	32,323	33,176
142	13	32,771	33,652	34,561	35,484
143	14	35,051	36,002	36,981	38,002
144	15	37,512	38,547	39,624	40,715
145	16	40,198	41,331	42,492	43,694
146	17	43,121	44,352	45,611	46,925
147	18	46,296	47,639	49,023	50,450
148	19	53,230	54,801	56,416	58,062
149	20	57,284	58,990	60,755	62,550
150	21	61,712	63,568	65,482	67,472
151	22	66,530	68,579	70,674	72,828
152	23	71,826	74,040	76,344	78,708
153	24	77,601	80,039	82,552	85,156
154	25	83,944	86,607	89,360	92,202

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

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

4 (b) Nothing in this article prohibits promotion of a classi-  
5 fied employee to a job title carrying a higher pay grade if the  
6 promotion is in accordance with the provisions of this  
7 article, the personnel classification and compensation system  
8 and personnel rules of the commission and council.

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

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

15 (2) The governing board has promulgated and adopted a  
16 salary rule in accordance with section six, article one of this  
17 chapter and the rules of the commission and council estab-  
18 lishing a procedure to ensure that salary increases above the  
19 temporary salary schedule are distributed equitably and in

20 a manner that is consistent with the uniform classification  
21 and compensation system.

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

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

1 (a) The intent of the Legislature in enacting this article is  
2 to establish the classification and compensation system for  
3 certain employees of higher education organizations and  
4 apply recognized best human resources practices in order to  
5 use available resources in the most effective and efficient  
6 manner for the benefit of the citizens of West Virginia.

7 It is further the intent of the Legislature to establish a plan  
8 that is fair, accountable, credible, transparent and system-  
9 atic. In recognition of the importance of these qualities, this  
10 article, together with articles seven, eight and nine of this  
11 chapter, is designated and may be cited as “FACTs for  
12 Higher Education”.

13 (b) In furtherance of the principles described in subsection  
14 (a) of this section, the chief purposes of the classification and  
15 compensation system are to accomplish the following  
16 objectives:

17 (1) Develop and implement a classification and compensa-  
18 tion system that is fair, transparent, understandable, simple

19 to administer, self-regulating and adaptable to meet future  
20 goals and priorities;

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

24 (3) Attract well-qualified and diverse job applicants and  
25 retain and motivate employees to accomplish the goals,  
26 objectives and priorities identified in state law, rules of the  
27 commission and council, the statewide master plans for  
28 higher education and the institutions' compacts;

29 (4) Retain and reward employees who make valuable  
30 contributions to state and organization goals, objectives and  
31 priorities;

32 (5) Compensate employees within an organization fairly in  
33 relation to one another;

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

36 (7) Compensate employees at levels that are competitive  
37 with appropriate external markets and are fiscally responsi-  
38 ble;

39 (8) Improve the process for evaluating jobs, including, but  
40 not limited to, mandating training and development in best

41 human resources practices and directing that key terms, job  
42 titles and evaluation forms are consistent across organiza-  
43 tions; and

44 (9) Ensure that regular market salary analyses are per-  
45 formed to determine how organization compensation for all  
46 classes of employees compares to compensation in relevant  
47 external markets.

**§18B-9A-2. Definitions.**

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

5 (a) “Classification system” means the process by which  
6 jobs, job titles, career ladders and assignment to pay grades  
7 are determined.

8 (b) “Classified employee” or “employee” means any regular  
9 employee of an organization who holds a position that is  
10 assigned a particular job and job title within the classifica-  
11 tion system established by this article, article nine and by  
12 duly promulgated and adopted rules of the commission and  
13 council.

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

17 (d) “Job description” means a summary of the most  
18 important features of a job, including the general nature and  
19 level of the work performed.

20 (e) “Job evaluation” means a formal process used to create  
21 a job worth hierarchy.

22 (f) “Job family” means a group of jobs having the same  
23 nature of work, but requiring different levels of skill, effort,  
24 responsibility or working conditions.

25 (g) “Job title” means the descriptive name for the total  
26 collection of tasks, duties and responsibilities assigned to one  
27 or more individuals whose positions have the same nature of  
28 work performed at the same level.

29 (h) “Job worth hierarchy” means the perceived internal  
30 value of jobs in relation to each other within an organization.

31 (i) “Nonclassified employee” means an employee of an  
32 organization who holds a position that is not assigned a  
33 particular job and job title within the classification system  
34 established by this article, article nine, and by duly promul-



35 gated and adopted rules of the commission and council and  
36 who meets one or more of the following criteria:

37 (1) Holds a direct policy-making position at the depart-  
38 ment or organization level; or

39 (2) Reports directly to the president or chief executive  
40 officer of the organization.

41 (j) "Organization" means the commission, the council, an  
42 agency or entity under the respective jurisdiction of the  
43 commission or the council or a state institution of higher  
44 education as defined in section two, article one of this  
45 chapter.

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

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

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

55 (n) "Position information questionnaire" or "PIQ" means  
56 a tool used in the creation and evaluation of position descrip-

57 tions and includes the factors of knowledge, experience,  
58 complexity and problem solving, freedom of action, scope  
59 and effect, breadth of responsibility, intra-systems contacts,  
60 external contacts, direct supervision of personnel, indirect  
61 supervision of personnel and health, safety and physical  
62 considerations.

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

**§18B-9A-3. Applicability.**

1 (a) The provisions of this article apply to employees whose  
2 employment, if continued, accumulates to a minimum total  
3 of one thousand forty hours during a calendar year and  
4 extends over at least nine months of a calendar year.

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

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

1 (a) The commission and council jointly shall maintain a  
2 uniform system for classifying jobs and positions of organi-  
3 zation employees.

4 (b) Pursuant to the rule authorized in section seven of this  
5 article, the commission and council jointly shall establish  
6 and maintain a job classification committee.

7 The rule shall contain the following provisions related to  
8 the job classification committee:

9 (A) A systematic method for appointing committee mem-  
10 bers who are representative of all the higher education  
11 organizations and affected constituent groups including  
12 specifically providing for membership selections to be made  
13 from nominations from these higher education organizations  
14 and affected constituent groups;

15 (B) A requirement that members be approved by the  
16 commission and council before beginning service on the  
17 committee;

18 (C) A requirement that an organization may have no more  
19 than two members serving on the committee at any time and

20 the combined membership representing various groups or  
21 divisions within or affiliated with an organization in total  
22 may not constitute a majority of the membership; and

23 (D) A requirement that committee members serve stag-  
24 gered terms. One third of the initial appointments shall be  
25 for two years, one third for three years and one third for four  
26 years. Thereafter, the term is four years. A member may not  
27 serve more than four years consecutively.

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

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

31 (2) Reviewing and revising job titles to make them consis-  
32 tent among organizations, including adopting consistent title  
33 abbreviations;

34 (3) Establishing job worth hierarchies and data lines for  
35 each job title;

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

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

41 (6) Recommending base pay enhancements for jobs for  
42 which the application of point factor methodology produces  
43 significantly lower salaries than external market pricing.  
44 The committee may exercise this authority only if it reevalu-  
45 ates each job annually to make a determination whether the  
46 enhancement should be continued;

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

49 (8) Determining appropriate career ladders within the  
50 classification system and establishing criteria for career  
51 progression; and

52 (9) Hearing job classification appeals prior to commence-  
53 ment of the formal grievance process pursuant to commission  
54 and council rule.

55 (d) The committee shall meet monthly if there is business  
56 to conduct and also may meet more frequently at the call of  
57 the chair. A majority of the voting members serving on the  
58 committee at a given time constitutes a quorum for the  
59 purpose of conducting business.

60 (e) When evaluating jobs, the committee shall use the  
61 following procedure:

62 (1) Each committee member shall classify each job individ-  
63 ually, independently of other members;

64 (2) The chair shall compile and share the individual  
65 evaluations with the whole committee; and

66 (3) After discussing the issues and resolving differences,  
67 the committee shall make a determination of the appropriate  
68 classification for each job.

69 (f) The commission and council shall use a point factor  
70 methodology to classify jobs. The commission and council  
71 jointly may adjust the job evaluation plan, including the  
72 factors used to classify jobs and their relative values, at any  
73 time.

74 (g) No later than July 1, 2012, the commission and council  
75 shall have in place an up-to-date job description for every  
76 classified job.

77 (h) The commission and council shall develop a position  
78 information questionnaire to be used by all organizations to  
79 gather data necessary for classification of positions within  
80 the job worth hierarchy.

**§18B-9A-5. Compensation planning and review committee estab-  
lished; membership; meetings; powers and duties.**

1 (a) Pursuant to the rule authorized in section seven of this  
2 article, the commission and council jointly shall establish  
3 and maintain a compensation planning and review commit-  
4 tee.

5 (b) Within the guidelines established in this article and  
6 articles seven, eight and nine of this chapter, the committee  
7 shall manage all aspects of compensation planning and  
8 review that the commission and council jointly delegate to it.

9 The rule shall contain the following requirements related  
10 to the compensation planning and review committee:

11 (1) A systematic method for appointing committee mem-  
12 bers who are representative of all the higher education  
13 organizations and affected constituent groups including  
14 specifically providing for membership selections to be made  
15 from nominations from these higher education organizations  
16 and affected constituent groups; and

17 (2) A requirement that members be approved by the  
18 commission and council before beginning service on the  
19 committee;

20 (3) A requirement that an organization may have no more  
21 than two members serving on the committee at any time and  
22 the combined membership representing various groups or

23 divisions within or affiliated with an organization in total  
24 may not constitute a majority of the membership; and

25 (4) A requirement that committee members serve staggered  
26 terms. One third of the initial appointments shall be for two  
27 years, one third for three years and one third for four years.  
28 Thereafter, the term is four years. A member may not serve  
29 more than four years consecutively.

30 (c) The committee shall meet at least quarterly and at other  
31 times at the call of the chair. A majority of the voting  
32 members serving on the committee at a given time consti-  
33 tutes a quorum for the purpose of conducting business.

34 (d) An institution may not have a majority of the committee  
35 members and the combined membership representing  
36 various groups or divisions within or affiliated with an  
37 organization in total may not constitute a majority of the  
38 membership.

39 (e) The Compensation Planning and Review Committee has  
40 powers and duties which include, but are not limited to, the  
41 following:

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



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

46 (3) Overseeing the annual internal market review;

47 (4) Meeting at least annually with the Job Classification

48 Committee to discuss benchmark jobs to be included in

49 salary surveys, market “hot jobs” that may require a tempo-

50 rary salary adjustment, results of job family reviews, and

51 assessment of current job titles within the classification

52 system for market matches and other issues as the Vice

53 Chancellor for Human Resources, in consultation with the

54 chancellors, determines to be appropriate; and

55 (5) Performing other duties as assigned by the commission

56 and council or as necessary or expedient to maintain an

57 effective classification and compensation system.

58 (f) The commission and council may allow the committee

59 to collapse the three lowest pay grades into a single pay

60 grade and provide for employees to be paid at rates appropri-

61 ate to the highest of the three lowest pay grades.

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

1 (a) The commission and council shall develop and maintain

2 a market salary structure and minimum salary schedules and

3 ensure that all organizations under their respective jurisdic-

4 tions adhere to state and federal laws and duly promulgated  
5 and adopted organization rules.

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

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

10 (2) Approval of the job evaluation plan;

11 (3) Approval of the annual market salary schedule; and

12 (4) Approval of the annual minimum salary schedule.

13 (c) The market salary structure serves as the basis for the  
14 following activities:

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

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

19 (d) The market salary structure shall meet the following  
20 criteria:

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

23 (2) Includes a midpoint value for each pay grade which  
24 represents the average salary of jobs in that pay grade. The

25 commission and council may choose a midpoint value that is  
26 not based exclusively on market salary data; and

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

30 (e) The commission and council jointly shall contract with  
31 an external vendor to conduct a classified employee market  
32 salary study at least once within each five-year period. At  
33 the conclusion of the study, the commission and council, in  
34 consultation with the Compensation Planning and Review  
35 Committee, may take any combination of the following  
36 actions:

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

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

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

42 (f) The commission and council jointly may perform an  
43 annual review of market salary data to determine how  
44 salaries have changed in the external market. Based on data  
45 collected, the commission and council jointly in consultation  
46 with the Compensation Planning and Review Committee,

47 shall adjust the market salary structure, if changes are  
48 supported by the data. In the absence of a market salary  
49 study conducted by an external vendor, the commission and  
50 council may not adjust the midpoint differentials between  
51 pay grades unless required to do so by a change in minimum  
52 wage or other laws and may not adjust the range spread for  
53 any pay grade.

54 (g) Annually, the commission and council may approve a  
55 minimum salary schedule that sets forth a compensation  
56 level for each step and pay grade below which no organiza-  
57 tion employee may be paid.

58 (1) The minimum salary floor for each pay grade and step  
59 on the minimum salary schedule is determined by applying  
60 the percentage fixed by commission and council rule promul-  
61 gated pursuant to section seven of this article to the annual  
62 market salary data. The commission and council also shall  
63 consider the minimum wage and other laws that ensure that  
64 employees earn a living wage and shall maintain a salary  
65 structure which ensures that the average salary of each class  
66 of employees meets relative market equity among employee  
67 classes. The commission and council may take into consider-  
68 ation other factors they consider appropriate.

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

71 (h) The organization rule promulgated pursuant to (d),  
72 section seven of this article may provide for differential pay  
73 for certain employees who work different shifts, weekends or  
74 holidays.

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

1 (a) Notwithstanding any provision of law or rule to the  
2 contrary, the commission and council jointly shall design,  
3 develop, implement and administer the personnel system of  
4 classification and compensation pursuant to this article and  
5 articles seven, eight and nine of this chapter. In developing  
6 and designing the system, they shall give careful consider-  
7 ation to the recommendations and supporting documentation  
8 contained in the *Final Report to the Select Committee on*  
9 *Higher Education Personnel*, prepared pursuant to section  
10 thirteen, article one-b of this chapter, which was received  
11 and approved by the Select Committee on January 11, 2010.

12 (b) *Classification and compensation system rule.* —

13 By November 1, 2011, the commission and council shall  
14 propose a joint rule or rules for legislative approval in

15 accordance with article three-a, chapter twenty-nine-a of  
16 this code to implement the provisions of this article and  
17 articles seven, eight and nine of this chapter. The rule shall  
18 establish a classification and compensation system that  
19 incorporates best human resources practices and takes into  
20 consideration the recommendations of the Legislative Select  
21 Committee on Higher Education Personnel. At a minimum,  
22 the system rule shall address the areas of organization  
23 accountability, employee classification and compensation,  
24 performance evaluation and development of organization  
25 rules.

26 (1) *Organization accountability.* —

27 The system rule shall provide a procedure for correcting  
28 deficiencies identified in the human resources reviews  
29 conducted pursuant to section nine, article seven of this  
30 chapter. The procedure shall include, but is not limited to,  
31 the following components:

32 (A) Specifying a reasonable time for organizations to  
33 correct deficiencies uncovered by a review;

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

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

40 (ii) When a major deficiency is identified, the commission  
41 or council, as appropriate, shall notify the governing board  
42 of the institution in writing, giving particulars of the defi-  
43 ciency and outlining steps the governing board is required to  
44 take to correct the deficiency.

45 (iii) The governing board shall correct the major deficiency  
46 within four months and shall notify the commission or  
47 council, as appropriate, when the deficiency has been  
48 corrected.

49 (iv) If the governing boards fail to correct the major  
50 deficiency or fails to notify the commission or council, as  
51 appropriate, that the deficiency has been corrected within a  
52 period of four months from the time the governing board  
53 receives notification, the commission or council shall apply  
54 sanctions as specified:

55 (I) A formal reprimand shall be placed in the personnel file  
56 of each key administrator who shares responsibility and has

57 operational authority in the area of the identified deficiency;  
58 and

59 (II) Other sanctions may include, but are not limited to,  
60 suspending new hiring by the organization and prohibiting  
61 compensation increases for key administrators who have  
62 authority over the areas of major deficiency until the  
63 identified deficiencies are corrected.

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

69 (2) *Employee classification and compensation.* — The  
70 system rule shall establish a classification and compensation  
71 system to accomplish the following objectives:

72 (A) Moving classified employees through the classification  
73 system based on performance and other objective, measur-  
74 able factors including education, years of experience in  
75 higher education and experience above position require-  
76 ments;

77 (B) Achieving and maintaining appropriate levels of  
78 employee dispersion across steps;



79 (C) Assigning each current employee to an initial step for  
80 his or her pay grade that is closest to and exceeds his or her  
81 current salary regardless of previous education, experience  
82 or performance. The rule shall provide that the salary of a  
83 current employee may not be reduced by a job reclassifica-  
84 tion, a modification of the market salary schedule, or other  
85 conditions that the commission and the council consider  
86 appropriate and reasonable;

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

91 (E) Establishing an objective standard to be used in  
92 determining when a job description or a position description  
93 is up-to-date;

94 (F) Providing a procedure whereby a classified employee or  
95 a supervisor who believes that changes in the job duties and  
96 responsibilities of the employee justify a position review may  
97 request that a review be done at any time;

98 (G) Specifying that the acceptable period that may elapse  
99 between the time when an employee files a formal request  
100 for a position review and the time when the review is

101 completed may not exceed forty-five days. An organization  
102 that fails to complete a review within the specified time shall  
103 provide the employee back pay from the date the request for  
104 review was received if the review, when completed, produces  
105 a reclassification of the position into a job in a higher pay  
106 grade;

107 (H) Providing a procedure by which employees may file  
108 appeals of job classification decisions for review by the Job  
109 Classification Committee prior to filing a formal grievance.  
110 The committee shall render a decision within sixty days of  
111 the date the appeal is filed with the commission or the  
112 council;

113 (I) Providing for recommendations from the Compensation  
114 Planning and Review Committee and the Job Classification  
115 Committee to be considered by the commission and the  
116 council and to be included in the legislative reporting  
117 process pursuant to section eight, article seven of this  
118 chapter; and

119 (J) Establishing and maintaining the job classification  
120 committee mandated in section four of this article.

121 (3) *Performance evaluations.* — The system rule shall  
122 provide for developing and implementing a consistent,

123 objective performance evaluation model and shall mandate  
124 that training in conducting performance evaluations be  
125 provided for all organization personnel who hold supervisory  
126 positions.

127 (c) *Emergency rule.* —

128 (1) The Legislature hereby finds that an emergency exists  
129 and, therefore, the commission and council shall propose a  
130 joint emergency rule or rules by November 1, 2011, in  
131 accordance with article three-a, chapter twenty-nine-a of  
132 this code to implement the provisions of this article and  
133 articles seven, eight and nine of this chapter.

134 (2) The commission and council shall file the emergency  
135 rule or rules with the Legislative Oversight Commission on  
136 Education Accountability by the date specified in subdivi-  
137 sion (1) of this subsection and may not implement the  
138 emergency rule or rules without prior approval.

139 (d) *Organization rules.* --

140 (1) Each organization shall promulgate and adopt a rule or  
141 rules in accordance with the provisions of section six, article  
142 one of this chapter to implement requirements contained in  
143 the classification and compensation system rule or rules of  
144 the commission and council. The commission and council

145 shall provide a model personnel rule for the organizations  
146 under their jurisdiction and shall provide technical assis-  
147 tance in rulemaking as requested.

148 (2) The initial organization rule shall be adopted not later  
149 than six months following the date on which the commission  
150 and council receive approval to implement the emergency  
151 rule promulgated pursuant to this section. Additionally, each  
152 organization shall amend its rule to comply with mandated  
153 changes not later than six months after the effective date of  
154 any change in statute or rules, unless a different compliance  
155 date is specified within the statute or rule containing the  
156 requirements or mandate.

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

160 (4) If an organization fails to adopt a rule or rules as  
161 mandated by this subsection, the commission and council  
162 may prohibit it from exercising any flexibility or implement-  
163 ing any discretionary provision relating to human resources  
164 contained in statute or in a commission or council rule until  
165 the organization's rule requirements have been met.

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

169 (A) Receives certification from the commission or council,  
170 as appropriate, that the organization has achieved full  
171 funding of the temporary salary schedule or is making  
172 appropriate progress toward achieving full funding pursuant  
173 to section three, article nine of this chapter;

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

176 (C) Receives approval for the classification and compensa-  
177 tion rule from the appropriate chancellor in accordance with  
178 this section; and

179 (D) Adopts the rule by vote of the organization's governing  
180 board.

181 (6) Notwithstanding any provision of this code to the  
182 contrary, each chancellor, or his or her designee, has the  
183 authority and the duty to review each classification and  
184 compensation rule promulgated by an organization under his  
185 or her jurisdiction and to recommend changes to the rule to  
186 bring it into compliance with state and federal law, commis-  
187 sion and council rules or legislative, commission and council

188 intent. Each chancellor may reject or disapprove any rule, in  
189 whole or in part, if he or she determines that it is not in  
190 compliance with law or rule or if it is inconsistent with  
191 legislative, commission and council intent.

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

1 (a) Sweeping cultural changes are needed to implement the  
2 recommendations of the Select Committee on Higher  
3 Education Personnel and the provisions of this article and  
4 articles seven, eight and nine of this code. These kinds of  
5 changes require dedication and cooperation from all em-  
6 ployee classes across the two systems of public higher  
7 education, the commission, council and state policymakers.  
8 The primary responsibility for implementation, however,  
9 rests with the commission and the council who shall provide  
10 leadership and assistance to the human resources profession-  
11 als within each organization to bring about the changes  
12 successfully.

13 (b) The implementation process shall be carried out in  
14 incremental steps, some of which may occur simultaneously.  
15 The steps include the following:

16 (1) Communicating with organization employees and  
17 administrators to acquaint them with the guiding principles  
18 of the classification and compensation system. The principles  
19 which undergird the policy changes are designed to promote  
20 fairness, accountability, credibility, transparency and a  
21 systematic approach to progress (FACTS for Higher Educa-  
22 tion). The discussion shall explain the origin of changes in  
23 law and policy and show how these are the result of four  
24 years of study culminating in the findings and recommenda-  
25 tions contained in the *Final Report to the Select Committee*  
26 *on Higher Education Personnel* (January 11, 2010).

27 (2) Seeking out credentialed, experienced human resources  
28 professionals to provide staff support to the commission,  
29 council and organizations, pursuant to section two-a, article  
30 four of this chapter, who are committed to creating a culture  
31 of constant improvement in a complex and rapidly changing  
32 environment. These professionals are catalysts to promote  
33 the Fair, Accountable, Credible, Transparent, and System-  
34 atic (FACTs) principles and to serve the organizations by  
35 assisting them in developing and maintaining best human  
36 resources practices.

37 (3) Conducting a review of the human resources function at  
38 each organization pursuant to section nine, article seven of  
39 this chapter to identify best practices and areas of defi-  
40 ciency.

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

46 (5) Preparing a request for a proposal (RFP) for a human  
47 resources information system capable of meeting a wide  
48 range of data requirements to support personnel and policy  
49 initiatives.

50 (6) Establishing the Compensation Planning and Review  
51 Committee pursuant to section five of this article and the Job  
52 Classification Committee pursuant to section four of this  
53 article whose members participate and represent a broad  
54 range of higher education interests in the decision and  
55 policy-making process.

56 (7) Providing data throughout the implementation process  
57 to the Legislative Oversight Commission on Education  
58 Accountability to inform state policymakers of progress and



59 to provide a forum for further discussion of higher education  
60 personnel issues and employee concerns.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE  
INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-1. Enrollment, tuition and other fees at education institu-  
tions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees  
2 for each ~~school~~ academic term for the different classes or  
3 categories of students enrolling at ~~each~~ the state institution  
4 of higher education under its jurisdiction and may include  
5 among the tuition and fees any one or more of the following  
6 as defined in section one-b of this article:

- 7 (1) Tuition and required educational and general fees;  
8 (2) Auxiliary and auxiliary capital fees; and  
9 (3) Required educational and general capital fees.

10 (b) ~~An institution~~ A governing board may establish a single  
11 special revenue account for each of the following classifica-  
12 tions of fees:

- 13 (1) All tuition and required educational and general fees  
14 collected;  
15 (2) All auxiliary and auxiliary capital fees collected; and

16 (3) All required educational and general capital fees  
17 collected to support existing systemwide and institutional  
18 debt service and future systemwide and institutional debt  
19 service, capital projects and campus renewal for educational  
20 and general facilities.

21 (4) Subject to any covenants or restrictions imposed with  
22 respect to revenue bonds payable from the accounts, ~~an~~  
23 ~~institution~~ a governing board may expend funds from each  
24 special revenue account for any purpose for which funds  
25 were collected within that account regardless of the original  
26 purpose for which the funds were collected.

27 (c) The purposes for which tuition and fees may be ex-  
28 pended include, but are not limited to, health services,  
29 student activities, recreational, athletic and extracurricular  
30 activities. Additionally, tuition and fees may be used to  
31 finance a ~~student's~~ students' attorney to perform legal  
32 services for students in civil matters at the institutions.  
33 ~~Provided, That~~ The legal services are limited ~~only~~ to those  
34 types of cases, programs or services approved by the ~~admin-~~  
35 ~~istrative head~~ president of the institution where the legal  
36 services are to be performed.

37 (d) By October 1, 2011, the commission and council ~~jointly~~  
38 each shall propose a rule for legislative approval in accor-  
39 dance with ~~the provisions of~~ article three-a, chapter twenty-  
40 nine-a of this code to govern the fixing, collection and  
41 expenditure of tuition and other fees by the governing boards  
42 under their respective jurisdictions.

43 (e) The schedule of all tuition and fees, and any changes in  
44 the schedule, shall be entered in the minutes of the meeting  
45 of the appropriate governing board and the board shall file  
46 with the commission or council, or both, as appropriate, and  
47 the Legislative Auditor a certified copy of the schedule and  
48 changes.

49 (f) The governing boards shall establish the rates to be  
50 charged full-time students, as defined in section one-b of this  
51 article, who are enrolled during a regular academic term.

52 (1) Undergraduate students taking fewer than twelve credit  
53 hours in a regular term shall have their fees reduced pro rata  
54 based upon one twelfth of the full-time rate per credit hour  
55 and graduate students taking fewer than nine credit hours in  
56 a regular term shall have their fees reduced pro rata based  
57 upon one ninth of the full-time rate per credit hour.

58 (2) Fees for students enrolled in summer terms or other  
59 nontraditional time periods shall be prorated based upon the  
60 number of credit hours for which the student enrolls in  
61 accordance with ~~the provisions of~~ this subsection.

62 (g) All fees are due and payable by the student upon  
63 enrollment and registration for classes except as provided in  
64 this subsection:

65 (1) The governing boards shall permit fee payments to be  
66 made in installments over the course of the academic term.  
67 All fees shall be paid prior to ~~the~~ awarding of course credit  
68 at the end of the academic term.

69 (2) The governing boards also shall authorize the accep-  
70 tance of credit cards or other payment methods which may  
71 be generally available to students for the payment of fees.  
72 The governing boards may charge the students for the  
73 reasonable and customary charges incurred in accepting  
74 credit cards and other methods of payment.

75 (3) If a governing board determines that a student's  
76 finances are affected adversely by a legal work stoppage, it  
77 may allow the student an additional six months to pay the  
78 fees for any academic term. The governing board shall

79 determine on a case-by-case basis if whether the finances of  
80 a student are affected adversely.

81 (4) The commission and council jointly shall propose a rule  
82 in accordance with ~~the provisions of~~ article three-a, chapter  
83 twenty-nine-a of this code defining conditions under which  
84 ~~an institution~~ a governing board may offer tuition and fee  
85 deferred payment plans ~~through the institution itself~~ or  
86 through third parties.

87 (5) ~~An institution~~ A governing board may charge interest  
88 or fees for any deferred or installment payment plans.

89 (h) In addition to the other fees provided in this section,  
90 each governing board may impose, collect and distribute a  
91 fee to be used to finance a nonprofit, student-controlled  
92 public interest research group if the students at the institu-  
93 tion demonstrate support for the increased fee in a manner  
94 and method established by that institution's elected student  
95 government. The fee may not be used to finance litigation  
96 against the institution.

97 (i) ~~Institutions~~ Governing boards shall retain tuition and  
98 fee revenues not pledged for bonded indebtedness or other  
99 purposes in accordance with the tuition ~~rule~~ rules proposed  
100 by the commission and council ~~jointly~~ pursuant to this

101 section. The tuition ~~rule~~ rules shall address the following  
102 areas:

103 (1) ~~Provide~~ Providing a basis for establishing nonresident  
104 tuition and fees;

105 (2) ~~Allow institutions~~ Allowing governing boards to charge  
106 different tuition and fees for different programs;

107 (3) ~~Provide that a board of Governors may~~ Authorizing a  
108 governing board to propose to the commission, council or  
109 both, as appropriate, a mandatory auxiliary fee under the  
110 following conditions:

111 (A) The fee shall be approved by the commission, council  
112 or both, as appropriate, and either the students below the  
113 senior level at the institution or the Legislature before  
114 becoming effective;

115 (B) Increases may not exceed previous state subsidies by  
116 more than ten percent;

117 (C) The fee may be used only to replace existing state funds  
118 subsidizing auxiliary services such as athletics or bookstores;

119 (D) If the fee is approved, the amount of the state subsidy  
120 shall be reduced annually by the amount of money generated  
121 for the institution by the fees. All state subsidies for the

122 auxiliary services shall cease five years from the date the  
123 mandatory auxiliary fee is implemented;

124 (E) The commission or council or both, as appropriate,  
125 shall certify to the Legislature annually by October 1 the  
126 amount of fees collected for each of the five years;

127 (4) ~~Establish~~ Establishing methodology, where applicable,  
128 to ensure that, within the appropriate time period under the  
129 compact, community and technical college tuition rates for  
130 ~~community and technical college~~ students in all ~~independ-~~  
131 ~~ently accredited~~ community and technical colleges will be  
132 commensurate with the tuition and fees charged by their  
133 peer institutions.

134 (j) A penalty may not be imposed by the commission or  
135 council upon any ~~institution~~ governing board based upon the  
136 number of nonresidents who attend the institution unless the  
137 commission or council determines that admission of nonresi-  
138 dents to any institution or program of study within the  
139 institution is impeding unreasonably the ability of resident  
140 students to attend the institution or participate in the  
141 programs of the institution. The ~~institutions~~ governing  
142 boards shall report annually to the commission or council on

143 the numbers of nonresidents and ~~such~~ any other enrollment  
144 information ~~as~~ the commission or council may request.

145 (k) Tuition and fee increases of the governing boards,  
146 ~~except for~~ including the governing boards of ~~the state~~  
147 ~~institutions of higher education known as~~ Marshall Univer-  
148 sity and West Virginia University, are subject to rules  
149 adopted by the commission and council ~~jointly~~ pursuant to  
150 this section and in accordance with ~~the provisions of~~ article  
151 three-a, chapter twenty-nine-a of this code. The commission  
152 or council, as appropriate, shall examine individually each  
153 request from a governing board for an increase and make its  
154 determinations as follows:

155 (1) ~~Subject to the provisions of subdivisions (4) and (8) of~~  
156 ~~this subsection, a governing board of an institution under the~~  
157 ~~jurisdiction of the commission may propose tuition and fee~~  
158 ~~increases of up to nine and one-half percent for undergradu-~~  
159 ~~ate resident students for any fiscal year. The nine and one-~~  
160 ~~half percent total includes the amount of increase over~~  
161 ~~existing tuition and fees, combined with the amount of any~~  
162 ~~newly established specialized fee which may be proposed by~~  
163 ~~a governing board.~~



164 ~~(2) A governing board under the jurisdiction of the council~~  
165 ~~may propose tuition and fee increases of up to four and~~  
166 ~~three-quarters percent for undergraduate resident students~~  
167 ~~for any fiscal year, except a governing board may propose~~  
168 ~~increases in excess of four and three-quarters percent if~~  
169 ~~existing tuition and fee rates at the institution are below the~~  
170 ~~state average for tuition and fees at institutions under the~~  
171 ~~jurisdiction of the council. The four and three-quarters~~  
172 ~~percent total includes the amount of increase over existing~~  
173 ~~tuition and fees, combined with the amount of any newly~~  
174 ~~established, specialized fee which may be proposed by a~~  
175 ~~governing board.~~

176 ~~(3) The commission or council, as appropriate, shall~~  
177 ~~examine individually each request from a governing board~~  
178 ~~for an increase.~~

179 ~~(4) Subject to the provisions of subdivision (8) of this~~  
180 ~~subsection, the governing boards of Marshall University and~~  
181 ~~West Virginia University, as these provisions relate to the~~  
182 ~~state institutions of higher education known as Marshall~~  
183 ~~University and West Virginia University, each may annually:~~

184 ~~(A) Increase tuition and fees for undergraduate resident~~  
185 ~~students to the maximum allowed by this section without~~  
186 ~~seeking approval from the commission; and~~

187 ~~(B) Set tuition and fee rates for post-baccalaureate resident~~  
188 ~~students and for all nonresident students, including estab-~~  
189 ~~lishing regional tuition and fee rates, reciprocity agreements~~  
190 ~~or both.~~

191 ~~(C) The provisions of this subdivision do not apply to~~  
192 ~~tuition and fee rates of the administratively linked institu-~~  
193 ~~tion known as Marshall Community and Technical College;~~  
194 ~~the administratively linked institution known as the Com-~~  
195 ~~munity and Technical College at West Virginia University~~  
196 ~~Institute of Technology, the regional campus known as West~~  
197 ~~Virginia University at Parkersburg and, until the first day of~~  
198 ~~July, two thousand seven, the regional campus known as~~  
199 ~~West Virginia University Institute of Technology.~~

200 ~~(5)(1) Any proposed A tuition and fee increase greater than~~  
201 ~~three percent for resident students proposed by a governing~~  
202 ~~board for state institutions of higher education other than~~  
203 ~~the state institutions of higher education known as except~~  
204 ~~the governing boards of Marshall University, West Virginia~~  
205 ~~School of Osteopathic Medicine and West Virginia Univer-~~  
206 ~~sity, requires the approval of the commission or council, as~~  
207 ~~appropriate.~~

208 (2) A tuition and fee increase greater than five percent for  
209 resident students proposed by the governing boards of  
210 Marshall University, West Virginia School of Osteopathic  
211 Medicine and West Virginia University requires the approval  
212 of the commission.

213 (3) A fee used solely for the purpose of complying with the  
214 athletic provisions of 20 U.S.C. 1681, et seq., known as Title  
215 IX of the Education Amendment of 1972, is exempt from the  
216 limitations on fee increases set forth in this subsection for  
217 three years from the effective date of the section.

218 (4) In determining whether to approve or deny ~~the~~ a  
219 governing board's request for a tuition and/or fee increase  
220 for resident students greater than the increases granted  
221 pursuant to subdivisions (1) and (2) of this subsection, the  
222 commission or council shall determine the progress the  
223 ~~institution~~ governing board has made toward meeting the  
224 conditions outlined in this ~~subdivision~~ subsection and shall  
225 make this determination the predominate factor in its  
226 decision. The commission or council shall consider the  
227 degree to which each ~~institution~~ governing board has met the  
228 following conditions:

229 (A) ~~Has Maximized~~ Maximizes resources available through  
230 nonresident tuition and fee charges to the satisfaction of the  
231 commission or council;

232 (B) ~~Is Consistently achieving~~ achieves the benchmarks  
233 established in the compact ~~of the institution~~ pursuant to ~~the~~  
234 ~~provisions of article one-a~~ one-d of this chapter;

235 (C) ~~Is Continuously pursuing~~ pursues the statewide goals  
236 for post-secondary education and the statewide compact  
237 established in ~~articles one and one-a~~ of this chapter;

238 (D) ~~Has demonstrated~~ Demonstrates to the satisfaction of  
239 the commission or council that an increase will be used to  
240 maintain high-quality programs at the institution;

241 (E) ~~Has demonstrated~~ Demonstrates to the satisfaction of  
242 the commission or council that the ~~institution~~ governing  
243 board is making adequate progress toward achieving the  
244 goals for education established by the southern regional  
245 education board;

246 (F) Demonstrates to the satisfaction of the commission or  
247 council that the governing board has considered the average  
248 per capita income of West Virginia families and their ability  
249 to pay for any increases; and

250 (G) Demonstrates to the satisfaction of the commission or  
251 council that base appropriation increases have not kept pace  
252 with recognized nation-wide inflationary benchmarks;

253 ~~(F) To the extent authorized, will increase by up to five~~  
254 ~~percent the available tuition and fee waivers provided by the~~  
255 ~~institution. The increased waivers may not be used for~~  
256 ~~athletics.~~

257 ~~(6)~~ (5) This section does not require equal increases among  
258 ~~institutions governing boards or nor does it require any level~~  
259 ~~of increase at an institution by a governing board.~~

260 ~~(7)~~ (6) The commission and council shall report to the  
261 Legislative Oversight Commission on Education Account-  
262 ability regarding the basis for approving or denying each  
263 ~~approval or denial request~~ request as determined using the criteria  
264 established in ~~subdivision (5) of~~ this subsection.

265 ~~(8) Notwithstanding the provisions of subdivisions (1) and~~  
266 ~~(4) of this subsection, tuition and fee increases at state~~  
267 ~~institutions of higher education which are under the jurisdic-~~  
268 ~~tion of the commission, including the state institutions of~~  
269 ~~higher education known as Marshall University and West~~  
270 ~~Virginia University, are subject to the following conditions:~~

271 ~~(A) Institutions may increase tuition and fees for resident,~~  
272 ~~undergraduate students by no more than an average of seven~~  
273 ~~and one-half percent per year during any period covering~~  
274 ~~four consecutive fiscal years, with the first fiscal year of the~~  
275 ~~first four fiscal-year cycle beginning on July 1, 2007;~~

276 ~~(B) The seven and one-half percent average cap does not~~  
277 ~~apply to an institution for any fiscal year in which the total~~  
278 ~~state base operating budget appropriations to that institution~~  
279 ~~are less than the total state base operating budget appropria-~~  
280 ~~tions in the fiscal year immediately preceding;~~

281 ~~(C) A new capital fee or an increase in an existing capital~~  
282 ~~fee is excluded from the tuition and fee increase calculation~~  
283 ~~in this subdivision:~~

284 ~~(i) If the new fee or fee increase is approved by an institu-~~  
285 ~~tional a governing board or by a referendum of an institu-~~  
286 ~~tion's undergraduate students, or both, on or before February~~  
287 ~~1, 2006; or~~

288 ~~(ii) If the following conditions are met:~~

289 ~~(I) The new fee or fee increase was approved by an institu-~~  
290 ~~tional a governing board or by a referendum of an institu-~~  
291 ~~tion's undergraduate students, or both, on or before July 1,~~  
292 ~~2006;~~

293 ~~(H) The institution for which the capital fee is approved~~  
294 ~~has been designated a university pursuant to the provisions~~  
295 ~~of section six, article two-a of this chapter by the effective~~  
296 ~~date of this section; and~~

297 ~~(HH) The institutional board of Governors previously~~  
298 ~~oversaw a community and technical college that achieved~~  
299 ~~independent accreditation and consequently acquired its~~  
300 ~~own board of Governors;~~

301 ~~(D) Institutions shall provide, in a timely manner, any data~~  
302 ~~on tuition and fee increases requested by the staff of the~~  
303 ~~commission. The commission shall: (i) collect the data from~~  
304 ~~any institution under its jurisdiction; and (ii) Annually by~~  
305 ~~July 1, provide a detailed analysis of the institutions'~~  
306 ~~compliance with the provisions of this subdivision to the~~  
307 ~~Legislative Oversight Commission on Education Account-~~  
308 ~~ability.~~

**ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

**§18B-19-10. Authorization to sell property; use of proceeds.**

1 (a) Notwithstanding any other provision of law or this code  
2 to the contrary, the commission, council and governing  
3 boards each may sell, lease, convey or otherwise dispose of  
4 ~~all or part of~~ any real property that it owns, either by

5 contract or at public auction, and retain the proceeds of the  
6 transaction.

7 (1) The commission, council and governing boards may not  
8 sell, lease, convey or otherwise dispose of any real property  
9 without first performing the following steps:

10 (A) Providing for property appraisal by two independent  
11 licensed appraisers. The property may not be sold for less  
12 than the average of the two appraisals;

13 (B) Providing notice to the public in the county in which  
14 the real property is located by a Class II legal advertisement  
15 pursuant to section two, article three, chapter fifty-nine of  
16 this code;

17 (C) Holding a public hearing on the issue in the county in  
18 which the real property is located; and

19 (D) In the case of the commission, notifying the Joint  
20 Committee on Government and Finance.

21 ~~(2) Any proceeds from the sale, lease, conveyance or other~~  
22 ~~disposal of real property that is used jointly by institutions~~  
23 ~~or for statewide programs under the jurisdiction of the~~  
24 ~~commission or the council shall be transferred to the General~~  
25 ~~Revenue Fund of the state.~~



26 ~~(b) (2)~~ The commission, council or a governing board shall  
27 deposit the net proceeds from the sale ~~lease, conveyance or~~  
28 ~~other disposal~~ of real property into a special revenue account  
29 in the State Treasury to be appropriated by the Legislature  
30 in the annual budget bill for the purchase of additional real  
31 property, equipment or technology, or for capital improve-  
32 ments or maintenance at the institution that sold the surplus  
33 real property.

34 (b) Notwithstanding any other provision of law or this code  
35 to the contrary, for purposes that further the state goals,  
36 objectives and priorities for higher education set out in this  
37 code, the commission, council and each governing board may  
38 lease, as lessor, any real property that it owns, either by  
39 contract or at public auction, and retain the proceeds of the  
40 lease.

41 (c) Notwithstanding any other provision of law or this code  
42 to the contrary, the commission, council and each governing  
43 board may convey, transfer or exchange any real property it  
44 owns to any other public body.

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NOTE: The purpose of this bill is to create “FACTS for Higher Education” by establishing fair, accountable, credible, transparent and systematic mechanisms to determine classification status and compensation for classified employees in public higher education organizations. It repeals certain provisions relating to higher education personnel generally, moves several current provisions to new locations and rewrites three existing articles. The bill sets forth certain specific powers, duties and limitations of the Higher Education Policy Commission, the Council for Community and Technical College Education and each state institution of higher education relating to personnel. It makes legislative findings, defines terms, provides for promulgation of rules, requires regular reviews of human resources functions and describes and establishes dates for periodic reports to the Legislature. The bill sets percentage limits for certain types of employees; establishes implementation and effective dates, requires review and approval of certain budget and rule-making functions; provides terms and conditions for certain employment practices; requires salary comparisons among classes of employees and certain of their peers; and authorizes and requires certain employee benefits and rights. The bill removes codified salary caps for classified employees under specific circumstances, provides for establishing market salary structures and a minimum salary schedule, requires periodic market salary studies and specifies uses for study findings. The bill requires employee performance evaluations and training for supervisory personnel who administer evaluations, sets limits for exercising certain operational flexibilities, establishes implementation goals for certain statutes and rules and assigns certain implementation responsibilities. The bill also establishes graduation rates that certain governing boards must meet, repeals sunset provision for pilot investment program for Marshall University and West Virginia University; extends their authority to increase certain types of investment with approval of the Policy Commission; and clarifies authority of the Policy Commission, the Council and governing boards regarding leasing, renting and selling property.

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; and §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 have been completely rewritten; §18B-4-2a; §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; and §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8 are new; therefore, strike-throughs and underscoring have been omitted.