

1 **H. B. 4568**

2
3 (By Delegates Skaff, Marcum, Sponaugle,
4 R. Phillips, Perry, Tomblin, Fleischauer, McCuskey,
5 Marshall and Pasdon)
6

7 [Introduced February 17, 2014; referred to the
8 Committee on Education then Finance.]
9

10 A BILL to amend and reenact §18B-7-1 and §18B-7-11 of the Code of
11 West Virginia, 1931, as amended; and to amend and reenact
12 §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code,
13 all relating to public higher education personnel generally;
14 providing legislative purposes and intent; providing
15 limitations on West Virginia University relating to
16 nonclassified personnel; providing presidents of higher
17 education organizations with the authority to consider
18 positions as nonclassified under certain conditions; requiring
19 the Higher Education Policy Commission to provide a report
20 regarding nonclassified positions; authorizing the governing
21 board of West Virginia University to develop rules relating to
22 a job classification committee and a compensation planning and
23 review committee; providing powers and duties to the job
24 classification committee and compensation planning and review
25 committee appointed by the governing board of West Virginia

1 University; providing West Virginia University with the
2 flexibility to develop, with oversight by the Higher Education
3 Policy Commission, job classifications, job positions, and
4 salary structures and schedules to meet the unique
5 characteristics of West Virginia University; providing the
6 Higher Education Policy Commission with flexibility with
7 regards to job classifications, job positions, and salary
8 structures for West Virginia University; requiring the job
9 classification committee and the compensation planning and
10 review committee appointed by the governing board of West
11 Virginia University to report to the Higher Education Policy
12 Commission and the Legislative Oversight Commission on
13 Education Accountability; and requiring that the Higher
14 Education Policy Commission consider, among other factors, the
15 relative market equity of the average salary of classes of
16 employees in developing salary schedules.

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

18 That §18B-7-1 and §18B-7-11 of the Code of West Virginia,
19 1931, as amended be amended and reenacted; and that §18B-9A-4,
20 §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and
21 reenacted, all to read as follows:

22 **ARTICLE 7. PERSONNEL GENERALLY.**

23 **§18B-7-1. Legislative intent and purpose.**

24 (a) The intent of the Legislature in enacting this article and

1 articles eight, nine and nine-a of this chapter is to establish a
2 state-wide, integrated human resources structure capable of, but
3 not limited to, meeting the following objectives:

4 (1) Providing benefits to the citizens of the State of West
5 Virginia by supporting the public policy agenda as articulated by
6 state policymakers;

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

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

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

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

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

20 (7) Adhering to federal and state laws;

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

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

24 (b) To accomplish these goals, the Legislature encourages

1 organizations to pursue a human resources strategy which provides
2 monetary and nonmonetary returns to employees in exchange for their
3 time, talents and efforts to meet articulated goals, objectives and
4 priorities of the state, the commission and council, and the
5 organization. The system should maximize the recruitment,
6 motivation and retention of highly qualified employees, ensure
7 satisfaction and engagement of employees with their jobs, ensure
8 job performance and achieve desired results.

9 (c) In establishing these goals, the Legislature recognizes
10 that higher education organizations and their respective governing
11 boards need flexibility in light of the significant and inherent
12 benefits that result from the local administration of human
13 resource policies and rules. Each higher education organization
14 retains the authority to administer human resource policies and
15 rules except as specifically and expressly set forth in articles
16 seven, eight, nine and nine-a of this chapter.

17 (d) The Legislature further recognizes the unique nature and
18 characteristics of West Virginia University, and the need for
19 flexibility in accomplishing the aforementioned goals at West
20 Virginia University in light of these considerations. The
21 Legislature therefore intends that West Virginia University be
22 given additional flexibility relating to the development and
23 administration of human resource policies and rules, including but
24 not limited to, job classifications, job positions and salary

1 structures pursuant to articles seven, eight, nine and nine-a of
2 this chapter.

3 **§18B-7-11. Employees designated as nonclassified; limits;**
4 **exceptions; reports required.**

5 (a) Notwithstanding any provision of this code to the
6 contrary, by July 1, 2015, the percentage of personnel placed in
7 the category of nonclassified at a higher education organization
8 may not exceed twenty percent of the total number of classified and
9 nonclassified employees of that organization as those terms are
10 defined in section two, article nine-a of this chapter and who are
11 eligible for membership in a state retirement system of the State
12 of West Virginia or other retirement plan authorized by the state:
13 Provided, That notwithstanding any other provision of this section,
14 in recognition of the unique staffing demands for their extensive
15 research and doctoral programs, the percentage of personnel placed
16 in the nonclassified category at West Virginia University may not
17 exceed twenty-five percent of the total number of employees of each
18 organization as those terms are defined in section two, article
19 nine-a of this chapter and who are eligible for membership in a
20 state retirement system of the State of West Virginia or other
21 retirement plan authorized by the state.

22 A higher education organization, other than West Virginia
23 University, which has more than twenty percent of its employees
24 placed in the nonclassified category as defined by this subsection

1 on July 1, 2011, shall reduce the number of nonclassified employees
2 to no more than twenty-five percent by July 1, 2013, and to no more
3 than twenty percent by July 1, 2015, except as set forth in
4 subsections (b) and (c) of this section.

5 (b) For the purpose of determining the ratio of nonclassified
6 employees pursuant to this section, the following conditions apply:

7 (1) Organizations shall count faculty or classified employees,
8 respectively, who retain the right to return to faculty or
9 classified employee positions, in the employee category they are
10 serving in at the time of reporting as required by subsections (a)
11 and (b), section eight of this article. Such employees will be
12 counted in their original category at such time as they exercise
13 their return rights.

14 (2) Athletic coaches are excluded from calculation of the
15 ratio. The commission and the council shall include consideration
16 of this employee category in each review required by section nine
17 of this article and shall monitor organizations' use of this
18 category and include this information in the reports required by
19 subsections (a) and (b), section eight of this article.

20 (c) An organization may place up to twenty-five percent of the
21 total number of classified and nonclassified employees of that
22 organization as defined by this section in the nonclassified
23 category under the following conditions:

24 (1) The governing board of an institution votes to approve any

1 percentage or fraction of a percentage number above twenty percent
2 and seeks and receives the approval of the commission or council,
3 as appropriate, before increasing the total above twenty percent.

4 (A) The commission and council each shall approve or
5 disapprove the increase and shall include the vote, as well as
6 details of the position and justification for placing the position
7 in the nonclassified category, in its minute record.

8 (B) The number of nonclassified personnel may not be increased
9 above twenty percent unless the increase is approved by both the
10 commission and the council.

11 (2) *Powers and duties of commission and council regarding*
12 *nonclassified staff ratios.* -

13 (A) It is the duty of the commission and council jointly to
14 establish criteria for the purpose of making decisions on approving
15 or disapproving requests by organizations to exceed the twenty
16 percent limit for personnel placed in the nonclassified category;

17 (B) The commission and council shall provide technical
18 assistance to organizations under their respective jurisdictions in
19 collecting and interpreting data to ensure that they fulfill the
20 requirements established by this section. Consideration of these
21 issues shall be made part of each review required by section nine
22 of this article and information from the review included in the
23 reports required by subsections (a) and (b), section eight of this
24 article;

1 (C) The chancellors shall monitor the progress of the
2 organizations in meeting the deadlines established in this section
3 and shall report periodically to the council and commission. The
4 commission and council shall make a preliminary compliance report
5 to the Legislative Oversight Commission on Education Accountability
6 by September 1, 2013, and a final report on organization compliance
7 to that body by September 1, 2015.

8 (D) Subject to a joint recommendation by the commission and
9 the council and subsequent affirmative action by the Legislature to
10 extend the authority beyond the specified date of termination, the
11 authority of an organization to place more than twenty percent of
12 its personnel in the nonclassified category pursuant to this
13 ~~section~~ subsection expires on July 1, 2016.

14 (d) A president of a higher education organization or designee
15 may designate a position as nonclassified if the position: (1) Is
16 responsible for policy formation at the department or institutional
17 level; (2) reports directly to the president; or (3) is in a
18 position considered critical to the higher education organization:
19 Provided, That any such designation may not result in the higher
20 education organization exceeding the limits established in
21 subsection (a) of this section.

22 ~~(d)~~ (e) The current annual salary of a nonclassified employee
23 may not be reduced if his or her position is redefined as a
24 classified position solely to meet the requirements of this

1 section. If such a nonclassified employee is reclassified, his or
2 her salary does not constitute evidence of inequitable compensation
3 in comparison to other employees in the same paygrade.

4 ~~(e)~~ (f) For the purposes of this section only the commission
5 and council are not considered higher education organizations.

6 (g) On or before September 1 of each year, the council and
7 the commission shall report to the Legislative Oversight Commission
8 on Education Accountability the following: (1) The percentage of
9 personnel placed in the category of nonclassified at each higher
10 education organization as of the preceding July 1, and (2) the
11 number and types of positions designated or established by a
12 president or designee as nonclassified during the previous fiscal
13 year.

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

15 **§18B-9A-4. Job classification system; job classification committee**
16 **established; membership; meetings; powers and duties.**

17 (a) The commission and council jointly shall maintain a
18 uniform system for classifying jobs and positions of organization
19 employees: Provided, That different job classifications and
20 positions may be developed for employees at West Virginia
21 University.

22 (b) Pursuant to the rule authorized in section seven of this
23 article, the commission and council jointly shall establish and

1 maintain a job classification committee: Provided, That the job
2 classification committee has no powers, duties, authority or
3 responsibility with regard to West Virginia University: Provided,
4 however, That the governing board of West Virginia University shall
5 promulgate a rule establishing a job classification committee that
6 shall have the powers established in subsections (c) through (g) of
7 this section, applicable to West Virginia University.

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

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

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

17 (C) A requirement that an organization may have no more than
18 two members serving on the committee at any time and the combined
19 membership representing various groups or divisions within or
20 affiliated with an organization in total may not constitute a
21 majority of the membership; and

22 (D) A requirement that committee members serve staggered
23 terms. One third of the initial appointments shall be for two
24 years, one third for three years and one third for four years.

1 Thereafter, the term is four years. A member may not serve more
2 than four years consecutively.

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

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

6 (2) Reviewing and revising job titles to make them consistent
7 among organizations, including adopting consistent title
8 abbreviations;

9 (3) Establishing job worth hierarchies and data lines for each
10 job title;

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

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

15 (6) Recommending base pay enhancements for jobs for which the
16 application of point factor methodology produces significantly
17 lower salaries than external market pricing. The committee may
18 exercise this authority only if it reevaluates each job annually to
19 make a determination whether the enhancement should be continued;

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

22 (8) Determining appropriate career ladders within the
23 classification system and establishing criteria for career
24 progression; and

1 (9) Hearing job classification appeals prior to commencement
2 of the formal grievance process pursuant to commission and council
3 rule.

4 (d) The committee shall meet monthly if there is business to
5 conduct and also may meet more frequently at the call of the chair.
6 A majority of the voting members serving on the committee at a
7 given time constitutes a quorum for the purpose of conducting
8 business.

9 (e) When evaluating jobs, the committee shall use the
10 following procedure:

11 (1) Each committee member shall classify each job
12 individually, independently of other members;

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

15 (3) After discussing the issues and resolving differences, the
16 committee shall make a determination of the appropriate
17 classification for each job.

18 (f) The commission and council shall use a point factor
19 methodology to classify jobs. The commission and council jointly
20 may adjust the job evaluation plan, including the factors used to
21 classify jobs and their relative values, at any time.

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

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

5 (i) The job classification committee established at West
6 Virginia University shall report on its actions annually, beginning
7 July 1 of 2015 and continuing every year thereafter, to the
8 commission and to the Legislative Oversight Commission on Education
9 Accountability.

10 **§18B-9A-5. Compensation planning and review committee established;**
11 **membership; meetings; powers and duties.**

12 (a) Pursuant to the rule authorized in section seven of this
13 article, the commission and council jointly shall establish and
14 maintain a compensation planning and review committee: Provided,
15 That the compensation planning and review committee has no powers,
16 duties, authority or responsibility with regard to West Virginia
17 University: Provided, however, That the governing board of West
18 Virginia University shall promulgate a rule establishing a
19 compensation planning and review committee that shall have the
20 powers established in subsections (c), (e), and (f) of this
21 section, applicable to West Virginia University.

22 (b) Within the guidelines established in this article and
23 articles seven, eight and nine of this chapter, the committee shall
24 manage all aspects of compensation planning and review that the

1 commission and council jointly delegate to it: Provided, That the
2 compensation planning and review committee for West Virginia
3 University shall manage all aspects of compensation planning and
4 review that the governing board of West Virginia University
5 delegates to it.

6 The rule promulgated by the council and commission for the
7 compensation planning and review committee shall contain the
8 following requirements related to the compensation planning and
9 review committee:

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

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

17 (3) A requirement that an organization may have no more than
18 two members serving on the committee at any time and the combined
19 membership representing various groups or divisions within or
20 affiliated with an organization in total may not constitute a
21 majority of the membership; and

22 (4) A requirement that committee members serve staggered
23 terms. One third of the initial appointments shall be for two
24 years, one third for three years and one third for four years.

1 Thereafter, the term is four years. A member may not serve more
2 than four years consecutively.

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

7 (d) An institution may not have a majority of the committee
8 members and the combined membership representing various groups or
9 divisions within or affiliated with an organization in total may
10 not constitute a majority of the membership.

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

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

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

17 (3) Overseeing the annual internal market review;

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

1 appropriate; and

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

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

9 (g) The compensation planning and review committee established
10 at West Virginia University shall report annually on its actions,
11 beginning July 1, 2015, and continuing every year thereafter, to
12 the commission and to the Legislative Oversight Commission on
13 Education Accountability.

14 **§18B-9A-6. Salary structure and salary schedules.**

15 (a) The commission and council shall develop and maintain a
16 market salary structure and minimum salary schedules and ensure
17 that all organizations under their respective jurisdictions adhere
18 to state and federal laws and duly promulgated and adopted
19 organization rules, and the commission and council shall take into
20 consideration the recommendations and actions taken by the
21 compensation planning and review committee and the job
22 classification committee established by the governing board of West
23 Virginia University, including the development of a market salary
24 structure and minimum salary schedules that would be applicable

1 only to West Virginia University. It is specifically noted that
2 West Virginia University may develop its own market salary
3 structure and minimum salary schedules and the commission may
4 request information related to the structure and schedules.

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

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

9 (2) Approval of the job evaluation plan;

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

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

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

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

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

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

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

22 (2) Includes a midpoint value for each pay grade which
23 represents the average salary of jobs in that pay grade. The
24 commission and council may choose a midpoint value that is not

1 based exclusively on market salary data; and

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

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

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

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

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

16 (f) The commission and council jointly may perform an annual
17 review of market salary data to determine how salaries have changed
18 in the external market. Based on data collected, the commission
19 and council jointly in consultation with the Compensation Planning
20 and Review Committee, shall adjust the market salary structure, if
21 changes are supported by the data. In the absence of a market
22 salary study conducted by an external vendor, the commission and
23 council may not adjust the midpoint differentials between pay
24 grades unless required to do so by a change in minimum wage or

1 other laws and may not adjust the range spread for any pay grade.

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

5 (1) The minimum salary floor for each pay grade and step on
6 the minimum salary schedule is determined by applying the
7 percentage fixed by commission and council rule promulgated
8 pursuant to section seven of this article to the annual market
9 salary data. The commission and council also shall consider the
10 minimum wage and other laws that ensure that employees earn a
11 living wage and ~~shall maintain a salary structure which ensures~~
12 ~~that~~ the average salary of each class of employees ~~meets in~~
13 relation to relative market equity among employee classes. The
14 commission and council may take into consideration other factors
15 they consider appropriate, but may not determine the minimum salary
16 floor for each pay grade and step on the minimum salary schedule
17 created by West Virginia University. The commission shall take
18 into consideration the recommendations and actions taken by the
19 compensation planning and review committee and the job
20 classification committee established by the governing board of West
21 Virginia University, including the development of a market salary
22 structure and minimum salary schedules that would be applicable
23 only to West Virginia University, and the commission may request
24 information related to the salary floor and schedule.

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

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

6 **§18B-9A-7. Classification and compensation rules required;**
7 **emergency rule authorized.**

8 (a) Notwithstanding any provision of law or rule to the
9 contrary, the commission and council jointly shall design, develop,
10 implement and administer the personnel system of classification and
11 compensation pursuant to this article and articles seven, eight and
12 nine of this chapter. In developing and designing the system, they
13 shall give careful consideration to the recommendations and
14 supporting documentation contained in the *Final Report to the*
15 *Select Committee on Higher Education Personnel*, prepared pursuant
16 to section thirteen, article one-b of this chapter, which was
17 received and approved by the Select Committee on January 11, 2010,
18 and the commission shall take into consideration the
19 recommendations and actions taken by the compensation planning and
20 review committee and the job classification committee established
21 by the governing board of West Virginia University, and shall take
22 action consistent with the compensation planning and review
23 committee and the job classification committee.

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

1 By November 1, 2011, the commission and council shall propose
2 a joint rule or rules for legislative approval in accordance with
3 article three-a, chapter twenty-nine-a of this code to implement
4 the provisions of this article and articles seven, eight and nine
5 of this chapter. The rule shall establish a classification and
6 compensation system that incorporates best human resources
7 practices and takes into consideration the recommendations of the
8 Legislative Select Committee on Higher Education Personnel. At a
9 minimum, the system rule shall address the areas of organization
10 accountability, employee classification and compensation,
11 performance evaluation and development of organization rules.

12 (1) *Organization accountability.* --

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

18 (A) Specifying a reasonable time for organizations to correct
19 deficiencies uncovered by a review;

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

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

1 (ii) When a major deficiency is identified, the commission or
2 council, as appropriate, shall notify the governing board of the
3 institution in writing, giving particulars of the deficiency and
4 outlining steps the governing board is required to take to correct
5 the deficiency.

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

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

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

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

23 (C) Certifying that an organization has achieved full funding
24 of the temporary annual classified employee salary schedule or is

1 making appropriate progress toward achieving full funding pursuant
2 to section three, article nine of this chapter.

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

6 (A) Moving classified employees through the classification
7 system based on performance and other objective, measurable factors
8 including education, years of experience in higher education and
9 experience above position requirements;

10 (B) Achieving and maintaining appropriate levels of employee
11 dispersion across steps;

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

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

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

1 to-date;

2 (F) Providing a procedure whereby a classified employee or a
3 supervisor who believes that changes in the job duties and
4 responsibilities of the employee justify a position review may
5 request that a review be done at any time;

6 (G) Specifying that the acceptable period that may elapse
7 between the time when an employee files a formal request for a
8 position review and the time when the review is completed may not
9 exceed forty-five days. An organization that fails to complete a
10 review within the specified time shall provide the employee back
11 pay from the date the request for review was received if the
12 review, when completed, produces a reclassification of the position
13 into a job in a higher pay grade;

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

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

24 (J) Establishing and maintaining the job classification

1 committee mandated in section four of this article.

2 (3) *Performance evaluations.* -- The system rule shall provide
3 for developing and implementing a consistent, objective performance
4 evaluation model and shall mandate that training in conducting
5 performance evaluations be provided for all organization personnel
6 who hold supervisory positions.

7 (c) *Emergency rule.* --

8 (1) The Legislature hereby finds that an emergency exists and,
9 therefore, the commission and council shall propose a joint
10 emergency rule or rules by November 1, 2011, in accordance with
11 article three-a, chapter twenty-nine-a of this code to implement
12 the provisions of this article and articles seven, eight and nine
13 of this chapter.

14 (2) The commission and council shall file the emergency rule
15 or rules with the Legislative Oversight Commission on Education
16 Accountability by the date specified in subdivision (1) of this
17 subsection and may not implement the emergency rule or rules
18 without prior approval.

19 (d) *Organization rules.* --

20 (1) Each organization shall promulgate and adopt a rule or
21 rules in accordance with the provisions of section six, article one
22 of this chapter to implement requirements contained in the
23 classification and compensation system rule or rules of the
24 commission and council. The commission and council shall provide

1 a model personnel rule for the organizations under their
2 jurisdiction and shall provide technical assistance in rulemaking
3 as requested.

4 (2) The initial organization rule shall be adopted not later
5 than six months following the date on which the commission and
6 council receive approval to implement the emergency rule
7 promulgated pursuant to this section. Additionally, each
8 organization shall amend its rule to comply with mandated changes
9 not later than six months after the effective date of any change in
10 statute or rules, unless a different compliance date is specified
11 within the statute or rule containing the requirements or mandate.

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

15 (4) If an organization fails to adopt a rule or rules as
16 mandated by this subsection, the commission and council may
17 prohibit it from exercising any flexibility or implementing any
18 discretionary provision relating to human resources contained in
19 statute or in a commission or council rule until the organization's
20 rule requirements have been met.

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

24 (A) Receives certification from the commission or council, as

1 appropriate, that the organization has achieved full funding of the
2 temporary salary schedule or is making appropriate progress toward
3 achieving full funding pursuant to section three, article nine of
4 this chapter;

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

7 (C) Receives approval for the classification and compensation
8 rule from the appropriate chancellor in accordance with this
9 section; and

10 (D) Adopts the rule by vote of the organization's governing
11 board.

12 (6) Notwithstanding any provision of this code to the
13 contrary, each chancellor, or his or her designee, has the
14 authority and the duty to review each classification and
15 compensation rule promulgated by an organization under his or her
16 jurisdiction and to recommend changes to the rule to bring it into
17 compliance with state and federal law, commission and council rules
18 or legislative, commission and council intent. Each chancellor may
19 reject or disapprove any rule, in whole or in part, if he or she
20 determines that it is not in compliance with law or rule or if it
21 is inconsistent with legislative, commission and council intent.

NOTE: The purpose of this bill is to provide institutions of

higher learning in general and West Virginia University with flexibility regarding personnel administration and policies. West Virginia University may have up to 25% of its personnel in nonclassified positions. The bill restores the authority of presidents to consider positions as nonclassified. The bill allows West Virginia University to appoint its own job classification committee and compensation planning and review committee. The bill provides those committees with authority relating to job classifications and salaries and also provides the Higher Education Policy Commission with the flexibility to develop and approve personnel policies specifically for West Virginia University. Finally, the bill authorizes the Higher Education Policy Commission to consider, but does not mandate the use of, relative market equity when developing salary schedules.

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