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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 439

(SENATORS PREZIOSO, CARMICHAEL, GAUNCH, D. HALL, KESSLER,
LEONHARDT, WALTERS, WILLIAMS, AND PLYMALE,
ORIGINAL SPONSORS)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §18B-4-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new section, designated §18B-9A-5a, all relating to public higher education personnel generally; clarifying roles and certain responsibilities of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; modifying legislative purposes and intent for higher education personnel, classification and compensation system, and classified employee salary schedule; defining terms and modifying defined terms; modifying and clarifying duties of

Vice Chancellor for Human Resources of the Higher Education Policy Commission; eliminating outdated and redundant reporting, rule and review requirements; requiring certain personnel provisions be created and specifying responsibilities; modifying certain reporting requirements; providing for evaluation and reviews of organizations for certain human resource deficiencies, best practices and compliance with state higher education personnel laws; modifying percentages and criteria of percentages of employees designated as “nonclassified”; modifying requirements for study of employment practices; expanding applicability of certain salary schedule provisions and flexibilities; clarifying that certain provisions are only applicable to classified employees; modifying and clarifying powers and duties of the Job Classification Committee and Compensation Planning and Review Committee; eliminating certain approval of members of Job Classification Committee and Compensation Planning and Review Committee; eliminating requirement that salary schedules fall within relative market equity; clarifying role and considerations of the Higher Education Policy Commission and Community and Technical College Council in developing salary schedules for classified employees; requiring classification and compensation rules; deleting obsolete provisions; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18B-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code be amended and reenacted; that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-9A-5a, all to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.**§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
3 commission shall employ a Vice Chancellor for Human
4 Resources who may not be dismissed without the consent of
5 the council. Any vacancy occurring in this position shall be
6 filled in accordance with this section.

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

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

16 (2) Thorough knowledge of and experience administering
17 employment laws and regulations, recruiting and selection
18 techniques, employee relations techniques and
19 methodologies, legal reporting and compliance requirements.

20 (c) The vice chancellor, in consultation with the
21 chancellors, performs functions, tasks and responsibilities
22 necessary to carry out the policy directives of the council and
23 commission and any other duties prescribed by law. The vice
24 chancellor oversees and monitors all issues related to the
25 personnel system for higher education employees and
26 provides advice and technical support to organizations as
27 directed or requested on all issues related to the design,

28 development, implementation and administration of the
29 personnel system established by this chapter and by duly
30 promulgated rules.

31 (d) The vice chancellor supervises employees at the
32 commission offices involved in human resources functions,
33 including the professional, administrative, clerical and other
34 employees necessary to carry out assigned powers and duties.
35 In consultation with the Vice Chancellor for Administration
36 and the chancellors, the vice chancellor shall delineate staff
37 responsibilities as considered desirable and appropriate.

38 (e) The vice chancellor provides support to the
39 chancellors and organizations on a highly diverse range of
40 issues, including assisting them to develop a culture of
41 constant improvement in a rapidly changing, complex market.
42 Duties of the position include, but are not limited to, the
43 following:

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

50 (2) Chairing, or designating a qualified designee to chair
51 the Job Classification Committee and the Compensation
52 Planning and Review Committee established by sections four
53 and five, article nine-a of this chapter.

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

58 (4) Assuming responsibility for coordinating
59 classification and compensation programs for classified
60 employees, including designing these programs, and for
61 supporting each higher education organization in
62 implementing the programs;

63 (5) Assisting, as directed or requested, organizations with
64 classification and/or compensation programs for faculty
65 and/or nonclassified employees, including, as appropriate,
66 design and implementation of the programs;

67 (6) Maintaining consistent human resources information
68 systems and selecting and supervising benefits consultants,
69 brokers, trustees and necessary legal assistants;

70 (7) Maintaining the classified employee classification
71 system by providing for regular review of jobs to determine
72 whether the current job description accurately reflects the
73 duties and responsibilities and whether the job is properly
74 classified or needs to be modified or deleted. Every job shall
75 be reviewed at least once within each five-year period;

76 (8) Ensuring that market comparison studies are
77 conducted for classified employees and providing a report
78 annually from data collected from each organization on the
79 status of compensation among the employee classifications.

80 (9) As requested by organizations, assist with carrying
81 out the following duties related to training and
82 development:

83 (A) Analyzing and determining training needs of
84 organization employees and formulating and developing
85 plans, procedures and programs to meet specific training
86 needs and problems.

87 (B) Developing, constructing, maintaining and revising
88 training manuals and training aids or supervising
89 development of these materials by outside suppliers;

90 (C) Planning, conducting and coordinating management
91 inventories, appraisals, placement, counseling and training;

92 (D) Coordinating participation by all employees in
93 training programs developed internally or provided by
94 outside contractors; and

95 (E) Administering and analyzing annual training and
96 development needs surveys. The survey may coincide with
97 the completion of the annual performance review process.

98 (10) As requested, assisting boards of governors and/or
99 presidents in conducting performance reviews of personnel
100 who administer human resources functions at each
101 organization in relation to best practices pursuant to articles
102 seven, eight, nine and nine-a of this chapter and rules of the
103 commission and council. Human resources personnel at each
104 organization shall be evaluated at least once within each
105 three-year period. Copies of evaluations will be submitted to
106 the Vice Chancellor who shall analyze the results of these
107 evaluations and target training and professional development
108 to identified areas of deficiency.

109 (f) To assist in performing the duties of vice chancellor,
110 the commission, with the consent of the council, shall create
111 the following positions, and fill the positions beginning July
112 1, 2016, with well qualified and appropriately credentialed
113 individuals who will report to the Vice Chancellor for Human
114 Resources and work collaboratively with governing boards
115 and their employees at all levels:

116 (1) A Generalist/Manager who is responsible for a wide
117 range of human resources management, the Human
118 Resources Information System, reporting and program
119 development activities;

120 (2) A Director of Classification and Compensation who
121 is responsible for maintaining job classification systems,
122 assisting organizations with classification and compensation
123 matters, coordinating compensation studies with the
124 compensation planning and review committee and external
125 vendors, and conducting annual compensation program
126 updates or market reviews;

127 (3) A Training and Development Specialist who is
128 responsible for assessing training needs, and for planning,
129 designing, developing, implementing and/or coordinating
130 delivery of training and development programs and activities
131 as required in subdivision (9), subsection (e) of this section
132 and section six, article seven 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
2 and articles eight, nine and nine-a of this chapter is to
3 establish a statewide, integrated higher education human
4 resources system capable of, but not limited to, meeting the
5 following objectives:

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

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

11 (3) Promoting fairness, accountability, credibility, and
12 transparency in personnel decisionmaking;

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
24 higher education system.

25 (10) Providing current, reliable data to governing boards,
26 the commission, the council, the Governor and the
27 Legislature to inform the decision-making process of these
28 policymakers.

29 (b) To accomplish these goals, the Legislature encourages
30 organizations to pursue a human resources strategy which
31 provides monetary and nonmonetary returns to employees in
32 exchange for their time, talents and efforts to meet articulated
33 goals, objectives and priorities of the state, the commission
34 and council, and the organization. The system should
35 maximize the recruitment, motivation and retention of highly
36 qualified employees, ensure satisfaction and engagement of
37 employees with their jobs, ensure job performance and
38 achieve desired results.

39 (c) It is the intent of the Legislature to establish a human
40 resources strategy that is fair, accountable, credible,
41 transparent and systematic. In recognition of the importance
42 of these qualities, the human resources strategy outlined in
43 this article, together with articles eight, nine and nine-a of
44 this chapter, is designated and may be cited as “FACTS for
45 Higher Education”.

46 (d) It is the intent of the Legislature to require each higher
47 education organization to achieve full funding of the salary
48 schedule established in section three, article nine of this
49 chapter. A higher education organization, as defined in section
50 two, article nine-a of this chapter, is subject to the provisions of
51 article nine of this chapter until full funding is reached.

52 (e) It is further the intent of the Legislature to encourage
53 strongly that each organization dedicate a portion of future
54 tuition increases to fund the classified salary schedule, and
55 after full funding of the salary schedule is achieved, to move
56 toward meeting salary goals for faculty, classified and
57 nonclassified employees.

§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 meanings
3 ascribed to them unless the context clearly indicates a
4 different meaning:

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

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

11 (3) “Compensatory time” and “compensatory time off”
12 mean hours during which the employee is not working, which
13 are not counted as hours worked during the applicable work
14 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 (4) “Employee classification” or “employee class” means
18 those employees designated as classified employees;
19 nonclassified employees, including presidents, chief
20 executives and top level administrators and faculty, as these
21 terms are defined in this article and articles eight, nine and
22 nine-a of this chapter.

23 (5) “Full-time” means an employee whose employment,
24 if continued, accumulates to a minimum total of one thousand
25 forty hours during a calendar year and extends over at least
26 nine months of a calendar year

27 (6) “Health and welfare benefit plan” means an
28 arrangement which provides any of the following: Medical,
29 dental, visual, psychiatric or long-term health care, life
30 insurance, accidental death or dismemberment benefits,
31 disability benefits or comparable benefits.

§18B-7-8. Reporting.

1 (a) *Annual personnel reports.* –

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

6 (A) Progress made by organizations toward achieving full
7 funding of the temporary classified employees’ salary

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8 schedule pursuant to section three, article nine of this chapter;
9 and

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

18 (2) The commission and council shall prepare a human
19 resources report card summarizing the performance of
20 organizations on key human resources measures established
21 by the commission and council. The report card shall be
22 presented to the Legislative Oversight Commission on
23 Education Accountability annually and shall be made
24 available to the general public. At a minimum, the human
25 resources report card shall contain the following data:

26 (A) Human resources department metrics by
27 organization:

28 (i) Number of human resources staff;

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

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

33 (iv) Number of positions reporting to the head of human
34 resources;

35 (v) Areas of human resources functions outsourced to
36 external entities;

37 (vi) Total expenses per full-time equivalent employee;
38 and

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

40 (B) Human resources expense data:

41 (i) Ratio of human resources expenses to operating
42 expenses;

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

45 (iii) Total human resources expense per organization
46 employee.

47 (C) Compensation data:

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

50 (ii) Total amount of organization employee salaries as a
51 percent of operating expenses; and

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

54 (D) System metrics:

55 (i) Comparisons of faculty salaries at each organization
56 to market averages; and

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

59 (E) An account of the total amount, type of training or
60 professional development provided, the number of employees

61 who participated and the overall cost of the training and
62 professional development provided to employees pursuant to
63 section six of this article; and

64 (F) Other measures the commission or council considers
65 appropriate to assist policymakers in evaluating the degree of
66 success in implementing best human resources practices by
67 higher education organizations.

68 (b) *Job classification system report.* –

69 By July 1, 2016, and at least once within each five-year
70 period thereafter, the commission and council jointly shall
71 review the effectiveness of the system for classifying jobs and
72 submit an in-depth report to the Legislative Oversight
73 Commission on Education Accountability. The report shall
74 include, but is not limited to, findings, recommendations and
75 supporting documentation regarding the following job
76 classification issues:

77 (1) The effectiveness of the point factor methodology and
78 a determination of whether it should be maintained; and

79 (2) The status of the job evaluation plan, including the
80 factors used to classify jobs or their relative values, and a
81 determination of whether the plan should be adjusted.

82 (c) It is the responsibility of the head of human resources
83 for each organization to prepare and submit to the president
84 or chief executive officer all human resources data requested
85 by the commission and council. The president or executive
86 officer of each organization shall submit the requested data
87 at times established by the commission and council.

88 (d) In meeting reporting requirements established by this
89 article and articles eight, nine and nine-a of this chapter:

90 (1) The commission and council shall use the most recent
91 data available and, as appropriate, shall benchmark it against
92 best practices and appropriate labor markets; and

93 (2) With the exception of the annual human resources
94 report card and any other report designated as due no later
95 than a date certain, the commission and council may combine
96 two or more personnel reports if the dates on which they are
97 due to the 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
6 completed by October 1, 2011, and shall be designed to
7 compare current human resources practices at each
8 organization to best practices to identify areas of strength or
9 deficiency, to identify functions that should be the
10 responsibility of the human resources department, but are
11 incorrectly assigned or carried out by other offices within
12 each organization, to assist in targeting employee training
13 and development, to determine the degree to which
14 organizations are adhering to state and federal laws related
15 to human resources administration and to provide data
16 necessary to guide policymakers in developing personnel
17 rules and implementing the classification and compensation
18 system.

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

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

27 (2) In the absence of special circumstances, the commission
28 and council shall provide organizations with reasonable notice
29 prior to conducting a human resources review and shall identify
30 the subjects to be examined in the review.

**§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, 2016, the percentage of personnel placed
3 in the category of nonclassified at a higher education
4 organization may not exceed twenty-five percent of the total
5 number of classified and nonclassified employees of that
6 organization as those terms are defined in section two, article
7 nine-a of this chapter and who are eligible for membership in
8 a state retirement system of the State of West Virginia or
9 other retirement plan authorized by the state. An institution
10 may not have more than ten percent of its total number of
11 classified and nonclassified employees in positions
12 considered by the president to be critical to the institution
13 pursuant to said section two, article nine-a of this chapter.

14 A higher education organization which has more than
15 twenty-five percent of its employees placed in the
16 nonclassified category as defined by this subsection on July
17 1, 2015, shall reduce the number of nonclassified employees
18 to no more than twenty-five percent by July 1, 2016,

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

22 (1) Organizations shall count faculty or classified
23 employees, respectively, who retain the right to return to
24 faculty or classified employee positions, in the employee
25 category they are serving in at the time of reporting as
26 required by subsections (a) and (b), section eight of this
27 article. Such employees will be counted in their original
28 category at such time as they exercise their return rights.

29 (2) Athletic coaches are excluded from calculation of the
30 ratio. The commission and the council shall include
31 consideration of this employee category in each review
32 required by section nine of this article and shall monitor
33 organizations' use of this category and include this
34 information in the report required by (a), section eight of this
35 article.

36 (c) *Powers and duties of commission and council*
37 *regarding nonclassified staff ratios. –*

38 (1) The commission and council shall provide advice and
39 technical assistance to organizations under their respective
40 jurisdictions in collecting and interpreting data to ensure that
41 they fulfill the requirements established by this section.
42 Consideration of these issues shall be made part of each
43 review required by section nine of this article and information
44 from the review included in the report required by subsection
45 (a), section eight of this article;

46 (2) The chancellors shall monitor the progress of the
47 organizations in meeting the deadlines established in this
48 section and shall report such in the annual human resources
49 report card.

50 (d) The current annual salary of a nonclassified employee
51 may not be reduced if his or her position is redefined as a
52 classified position solely to meet the requirements of this

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53 section. If such a nonclassified employee is reclassified, his
54 or her salary does not constitute evidence of inequitable
55 compensation in comparison to other employees in the same
56 pay grade.

57 (e) For the purposes of this section only the commission
58 and council are not considered higher education
59 organizations.

§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 and
10 transferring classified employees;

11 (3) Determining the appropriate definition of a
12 “nonclassified” position, recommending a best practice
13 criteria for designating positions as nonclassified and
14 recommending the appropriate number or ratio of
15 nonclassified positions for commission and council
16 organizations.

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

21 (b) The commission and council shall complete the work
22 and report their findings, conclusions and recommendations,
23 together with drafts of any legislation necessary to effectuate
24 the recommendations, to the Legislative Oversight
25 Commission on Education Accountability upon completion,
26 but no later than January 1, 2018.

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

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

1 The purpose of the Legislature in enacting this article is
2 to require the commission and council jointly to implement,
3 control, supervise and manage a complete, uniform system of
4 personnel classification and compensation in accordance with
5 the provisions of this article for classified employees at
6 higher education organizations.

§18B-9-2. Definitions.

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

3 (1) “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 and
6 pay grade in accordance with the personnel classification and
7 compensation system established by this article or by the
8 commission and council;

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

13 (3) “Schedule” or “salary schedule” means the grid of
14 annual salary figures established in section three of this
15 article; and

16 (4) “Years of experience” means the number of years a
17 person has been an employee of the State of West Virginia
18 and refers to the horizontal column heading of the salary
19 schedule established in section three of this article. For the
20 purpose of placement on the salary schedule, employment for
21 nine months or more equals one year of experience, but a
22 classified employee may not accrue more than one year of
23 experience during any given fiscal year. Employment for less
24 than full time or for fewer than nine months during any fiscal
25 year shall be prorated. In accordance with rules established
26 by the commission and council jointly, a classified employee
27 may be granted additional years of experience not to exceed
28 the actual number of years of prior, relevant work or
29 experience at accredited institutions of higher education other
30 than state institutions of higher education.

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 (b) In furtherance of the principles described in
8 subsection (a) of this section, the chief purposes of the
9 classified classification and compensation system are to
10 accomplish the following objectives:

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

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

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

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

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

27 (c) It is further the intent of the Legislature to ensure that
28 regular compensation analyses are performed to determine
29 how organization compensation for all classes of employees
30 compares to compensation in relevant external markets.

§18B-9A-2. Definitions.

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

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

8 (2) “Classified employee” or “employee” means a regular
9 full-time or regular part-time employee of an organization
10 who holds a position that is assigned a particular job title and
11 pay grade in accordance with the personnel classification and
12 compensation system established by this article or by the
13 commission and council.

14 (3) “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 (4) “Job description” or “position description” means a
18 summary of the most important features of a job, including
19 the general nature and level of the work performed.

20 (5) “Job evaluation” means a systematic way of
21 determining the value/worth of a job in relation to other jobs in
22 an organization by analyzing weighted compensable factors
23 resulting in the assignment of a job title and pay grade to a
24 position described by a position information questionnaire.

25 (6) “Job family” means a group of jobs having the same
26 nature of work, but requiring different levels of skill, effort,
27 responsibility or working conditions.

28 (7) “Job specification” means the generic description of
29 a group of jobs assigned a common job title in the
30 classification system. The job specification contains a brief
31 summary of the purpose of the job; the most common duties
32 and responsibilities performed by positions holding the title;
33 knowledge, skills and abilities necessary to perform the work;
34 and minimum qualifications required for positions assigned
35 the title.

36 (8) “Job title” means the descriptive name for the total
37 collection of tasks, duties and responsibilities assigned to one

38 or more individuals whose positions have the same nature of
39 work performed at the same level.

40 (9) “Job worth hierarchy” means the perceived internal
41 value of jobs in relation to each other within an organization.

42 (10) “Midpoint differential” means the difference in wage
43 rates paid in the midpoints of two adjacent pay grades. A
44 midpoint differential is calculated by taking the difference
45 between the two adjacent midpoints as a percentage of the
46 lower of the midpoints.

47 (11) “Nonclassified employee” means an employee of an
48 organization who holds a position that is not assigned a
49 particular job and job title within the classification system
50 established by this article and article nine of this chapter, and
51 by duly promulgated and adopted rules of the commission
52 and council and who meets one or more of the following
53 criteria:

54 (A) Holds a direct policy-making position at the
55 department or organization level;

56 (B) Reports directly to the president or chief executive
57 officer of the organization; or

58 (C) Is in a position considered by the president to be
59 critical to the institution pursuant to policies adopted by the
60 governing board.

61 (12) “Organization” means the commission, the council,
62 an agency or entity under the respective jurisdiction of the
63 commission or the council or a state institution of higher
64 education as defined in section two, article one of this
65 chapter.

66 (13) “Pay grade” means the level to which a job is
67 assigned within a job worth hierarchy as a result of job
68 evaluation.

69 (14) “Point factor methodology” means a quantitative job
70 evaluation process in which elements of a job are given a
71 factor value and each factor is weighted according to its
72 importance.

73 (15) “Position information questionnaire” or “PIQ”
74 means a tool used to gather specific job information for a
75 specific position held by an individual, and used for the
76 purposes of evaluating the position for determination of job
77 title and pay grade. The PIQ is used to gather information
78 used to assess the compensable factors of knowledge,
79 experience, complexity and problem solving, freedom of
80 action, scope and effect, breadth of responsibility, intra-
81 systems contacts, external contacts, direct supervision of
82 personnel, indirect supervision of personnel and health, safety
83 and physical considerations.

84 (16) “Pay range spread” means the difference in the
85 minimum and maximum rate of pay for a pay grade expressed
86 as a percentage.

§18B-9A-3. Applicability.

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

10 employees in excess of the salary established for their pay
11 grade and years of experience indicated on the temporary
12 classified employee annual salary schedule established by
13 section three, article nine of this chapter. Additional
14 flexibility provisions, such as the ability to modify the
15 classified salary schedule at the organization level are
16 identified and governed in section four, article nine of this
17 chapter.

**§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
3 organization classified employees.

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

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

9 (1) A systematic method for appointing committee
10 members 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 (2) A requirement that an organization may have no more
16 than two members serving on the committee at any time and
17 the combined membership representing various groups or
18 divisions within or affiliated with an organization in total
19 may not constitute a majority of the membership; and

25

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20 (3) A requirement that committee members serve
21 staggered terms. One third of the initial appointments shall
22 be for two years, one third for three years and one third for
23 four years. Thereafter, the term is four years. A member
24 may not serve more than four years consecutively.

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

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

28 (2) Reviewing and revising job titles to make them
29 consistent among organizations, including adopting
30 consistent title abbreviations;

31 (3) Establishing job worth hierarchies and data lines for
32 each job title;

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

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

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

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

46 (8) Determining appropriate career ladders within the
47 classification system and establishing criteria for career
48 progression; and

49 (9) Hearing job classification appeals prior to
50 commencement of the formal grievance process pursuant to
51 commission and council rule.

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

57 (e) The commission and council shall use an appropriate
58 methodology to classify jobs. The commission and council
59 jointly may adjust the job evaluation plan, including the
60 factors used to classify jobs and their relative values, at any
61 time.

62 (f) No later than July 1, 2012, the commission and
63 council shall have in place an up-to-date job description for
64 every classified job.

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

**§18B-9A-5. Compensation planning and review committee established;
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 and
3 maintain a compensation planning and review committee.

4 (b) Within the guidelines established in this article and
5 articles seven, eight and nine of this chapter, the committee
6 shall manage all aspects of compensation planning and
7 review that the commission and council jointly delegate to
8 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
12 members 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 an organization may have no more
18 than two members serving on the committee at any time and
19 the combined membership representing various groups or
20 divisions within or affiliated with an organization in total
21 may not constitute a majority of the membership; and

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

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

31 (d) An institution may not have a majority of the
32 committee members, and the combined membership
33 representing various groups or divisions within or affiliated

34 with an organization in total may not constitute a majority of
35 the membership.

36 (e) The Compensation Planning and Review Committee
37 has powers and duties related to classified employee
38 compensation programs which include, but are not limited to,
39 the following:

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

44 (2) Overseeing the five-year market salary study
45 conducted by an external vendor pursuant to section six of
46 this article;

47 (3) Overseeing the annual internal market review;

48 (4) Meeting at least annually with the Job Classification
49 Committee to discuss benchmark jobs to be included in salary
50 surveys, market “hot jobs” that may require a temporary
51 salary adjustment, results of job family reviews and
52 assessment of current job titles within the classification
53 system for market matches and other issues as the Vice
54 Chancellor for Human Resources, in consultation with the
55 chancellors, determines to be appropriate; and

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

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

§18B-9A-5a. Restriction on duties of job classification committee and compensation planning and review committee.

1 The commission and council may not delegate any of the
2 following duties to the Compensation Planning and Review
3 Committee or the Job Classification Committee:

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

5 (2) Approval of the job evaluation plan; and

6 (3) Approval of the annual classified salary schedule.

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

1 (a) The commission and council shall develop and
2 maintain a classified salary schedule and ensure that all
3 organizations under their respective jurisdictions adhere to
4 state and federal laws and duly promulgated and adopted
5 organization rules.

6 (b) The classified salary schedule serves as the basis for
7 the following activities:

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

10 (2) Developing the minimum salary per pay grade to be
11 adopted by the commission and council.

12 (c) The classified salary schedule shall meet the following
13 criteria:

14 (1) Sets forth the number of pay grades to be included in
15 the structure;

16 (2) Includes a midpoint value for each pay grade which
17 represents the average market rate of pay for jobs in that pay
18 grade. The commission and council may choose a midpoint
19 value that is not based exclusively on market salary data; and

20 (3) Includes minimum and maximum pay range values
21 based on an established range spread.

22 (d) The commission and council jointly shall contract
23 with an external vendor to conduct a classified employee
24 market salary study. The study shall be completed by
25 January 31, 2016, and on January 31 every fifth year
26 thereafter. At the conclusion of each study, or for good cause,
27 the commission and council, in consultation with the
28 Compensation Planning and Review Committee, may take
29 any combination of the following actions:

30 (1) Adjust the number of pay grades and the point values
31 necessary to validate the result of the classification system
32 and the job worth hierarchy with the market;

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

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

36 (e) The commission and council jointly may perform an
37 annual review of market salary data to determine how salaries
38 have changed in the external market. Based on data
39 collected, the commission and council jointly, in consultation
40 with the Compensation Planning and Review Committee,
41 shall adjust the classified salary schedule if changes are
42 supported by the data.

43 (f) Annually, the commission and council may approve a
44 minimum salary amount that sets forth a compensation level

45 for each pay grade below which no organization employee
46 may be paid.

47 (1) The minimum salary amount for each pay grade on
48 the classified salary schedule is determined by applying a
49 percentage determined after analysis of the market and
50 existing compensation levels to the annual market salary data.
51 The commission and council may take into consideration
52 other factors they consider appropriate.

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

55 (g) The organization rule promulgated pursuant to
56 subsection (c), section seven of this article may provide for
57 differential pay for certain employees who work different
58 shifts, weekends or holidays.

§18B-9A-7. Classification and compensation rules required.

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 classified personnel
4 system of classification and compensation pursuant to this
5 article and articles seven, eight and nine of this chapter.

6 (b) *System rule.* –

7 The commission and council shall propose a joint rule or
8 rules for legislative approval in accordance with article three-
9 a, chapter twenty-nine-a of this code to implement the
10 provisions of this article and articles seven, eight and nine of
11 this chapter. The rule shall establish a classified employee
12 classification and compensation system that incorporates best
13 human resources practices.

14 (1) *Organization accountability.* –

15 The commission and council shall propose a joint system
16 rule that provides a procedure for correcting deficiencies
17 identified in the human resources reviews conducted pursuant
18 to section nine, article seven of this chapter. The procedure
19 shall include, but is not limited to, the following components:

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

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

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

27 (ii) When a major deficiency is identified, the
28 commission or council, as appropriate, shall notify the
29 governing board of the institution in writing, giving
30 particulars of the deficiency and outlining steps the governing
31 board is required to take to correct the deficiency.

32 (iii) The governing board shall correct the major
33 deficiency within four months or longer provided the length
34 of time is agreed upon by the governing board and the
35 commission or council as applicable, and shall notify the
36 commission or council, as appropriate, when the deficiency
37 has been corrected.

38 (iv) If the governing boards fail to correct the major
39 deficiency or fail to notify the commission or council, as
40 appropriate, that the deficiency has been corrected within the
41 agreed upon period, the commission or council shall apply
42 sanctions.

43 Sanctions may include, but are not limited to, suspending
44 new hiring by the organization and prohibiting compensation
45 increases for key administrators who have authority over the
46 areas of major deficiency until the identified deficiencies are
47 corrected.

48 (2) *Classified employee classification and compensation.* –
49 The classified employee classification and compensation
50 system rule shall establish a classification and compensation
51 system to accomplish the following objectives:

52 (A) Allowing for performance and other objective,
53 measurable factors such as technical expertise, education,
54 years of experience in higher education and experience above
55 position requirements to be considered in compensation
56 decisions;

57 (B) Achieving and maintaining appropriate levels of
58 employee dispersion through a pay range;

59 (C) The rule shall provide that the salary of a current
60 employee may not be reduced by a job reclassification, a
61 modification of the market salary schedule or other
62 conditions that the commission and the council consider
63 appropriate and reasonable;

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

68 (E) Establishing an objective standard to be used in
69 determining when a job description or a position description
70 is up-to-date;

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

75 (G) Specifying that the acceptable period that may elapse
76 between the time when an employee files a formal request for
77 a position review and the time when the review is completed
78 may not exceed forty-five days. An organization that fails to
79 complete a review within the specified time shall provide the
80 employee back pay from the date the request for review was
81 received if the review, when completed, produces a
82 reclassification of the position into a job in a higher pay
83 grade;

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

90 (I) Providing for recommendations from the
91 Compensation Planning and Review Committee and the Job
92 Classification Committee to be considered by the commission
93 and the council and to be included in the legislative reporting
94 process pursuant to section eight, article seven of this
95 chapter; and

96 (J) Establishing and maintaining the job classification
97 committee mandated in section four of this article.

98 (3) *Performance evaluations.* -- The system rule shall
99 provide for developing and implementing a consistent,
100 objective performance evaluation model and shall mandate
101 that training in conducting performance evaluations be

102 provided for all organization personnel who hold supervisory
103 positions.

104 (c) *Organization rules.* –

105 (1) Each organization shall promulgate and adopt a rule
106 or rules in accordance with the provisions of section six,
107 article one of this chapter to implement requirements
108 contained in the classification and compensation system rule
109 or rules of the commission and council. The commission and
110 council shall provide a model personnel rule for the
111 organizations under their jurisdiction and shall provide
112 technical assistance in rulemaking as requested.

113 (2) The initial organization rule shall be adopted not later
114 than six months following the date on which the commission
115 and council receive approval to implement the emergency
116 rule promulgated pursuant to this section. Additionally, each
117 organization shall amend its rule to comply with mandated
118 changes not later than six months after the effective date of
119 any change in statute or rules, unless a different compliance
120 date is specified within the statute or rule containing the
121 requirements or mandate.

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

125 (4) If an organization fails to adopt a rule or rules as
126 mandated by this subsection, the commission and council
127 may prohibit it from exercising any flexibility or
128 implementing any discretionary provision relating to human
129 resources contained in statute or in a commission or council
130 rule until the organization's rule requirements have been
131 met.

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

136 (A) Receives certification from the commission or
137 council, as appropriate, that the organization has achieved
138 full funding of the temporary salary schedule or is making
139 appropriate progress toward achieving full funding pursuant
140 to section three, article nine of this chapter;

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

143 (C) Receives approval for the classification and
144 compensation rule from the appropriate chancellor in
145 accordance with this section; and

146 (D) Adopts the rule by vote of the organization's
147 governing board.

148 (6) Notwithstanding any provision of this code to the
149 contrary, each chancellor, or his or her designee, has the
150 authority and the duty to review each classification and
151 compensation rule promulgated by an organization under his
152 or her jurisdiction and to recommend changes to the rule to
153 bring it into compliance with state and federal law,
154 commission and council rules or legislative, commission and
155 council intent. Each chancellor may reject or disapprove any
156 rule, in whole or in part, if he or she determines that it is not
157 in compliance with law or rule or if it is inconsistent with
158 legislative, commission and council intent.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

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Governor