

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 274

FISCAL
NOTE

BY SENATORS BLAIR AND MARONEY

[Introduced February 13, 2017; referred
to the Committee on Education; and then to the
Committee on Finance]

1 A BILL to repeal §18B-7-9 and §18B-7-11 of the Code of West Virginia, 1931, as amended; to
2 repeal §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; to repeal §18B-9A-3
3 and §18B-9A-8 of said code; to amend and reenact §18B-1B-5 of said code; to amend
4 and reenact §18B-4-1 and §18B-4-2a of said code; to amend and reenact §18B-7-1, §18B-
5 7-2, §18B-7-3, §18B-7-6 and §18B-7-8 of said code; to amend said code by adding thereto
6 a new section, designated §18B-8-7; to amend and reenact §18B-9A-2, §18B-9A-5, §18B-
7 9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new article,
8 designated §18B-9B-1, all relating to public higher education personnel generally;
9 clarifying roles of Higher Education Policy Commission, Council for Community and
10 Technical College Education and state organizations of higher education; eliminating
11 certain human resources review by Higher Education Policy Commission and Council for
12 Community and Technical College Education; eliminating specific references to the Vice
13 Chancellor for Human Resources; eliminating outdated and redundant reporting
14 requirements; eliminating requirement for Higher Education Policy Commission to create
15 certain positions that report to Vice Chancellor for Human Resources; eliminating certain
16 higher education organization employment ratios and requirements; eliminating higher
17 education organization classified employee salary schedule, outdated associated
18 requirements and definitions; eliminating certain requirements related to exercising
19 flexibility in human resources for higher education organizations; eliminating outline of
20 steps for implementation of classification and compensation system by Higher Education
21 Policy Commission and Council for Community and Technical College Education;
22 providing legislative purposes and intent for higher education personnel; defining terms;
23 providing and revising rules relating to reductions in workforce and hiring preferences;
24 providing for continuing education and professional development; providing for evaluation
25 and reviews of organizations for certain human resource deficiencies, best practices and
26 compliance with state higher education personnel laws; providing for content of certain

27 reports from Higher Education Policy Commission and Council for Community and
 28 Technical College Education to Legislative Oversight Commission on Education
 29 Accountability; authorizing organizations to adopt rules relating to employment policies
 30 and practices for staff and faculty; providing for preemption of Higher Education Policy
 31 Commission and Council for Community and Technical College Education rules conflicting
 32 with a governing board rule on faculty; defining “classified” and “nonclassified” employees;
 33 clarifying powers and duties of the Compensation Planning and Review Committee;
 34 providing that the Higher Education Policy Commission shall develop a model minimum
 35 salary schedule using West Virginia Workforce and other relevant data that organizations
 36 shall follow except in certain instances; providing that the Higher Education Policy
 37 Commission develop classification and compensation rules; providing state organizations
 38 of higher education with the ability to propose and implement approved legislative rules
 39 relating to classification and compensation with certain exceptions; and requiring any rule
 40 proposed by a state organization of higher education incorporate best human resources
 41 practices, address areas of accountability, employee classification and compensation and
 42 performance evaluation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION

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

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

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

7 (1) Possesses an excellent academic and administrative background;

8 (2) Demonstrates strong communication skills;

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

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

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

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

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

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

25 education in the states that comprise the membership of the Southern Regional Education Board.

26 (f) The commission may employ a Vice Chancellor for Health Sciences who serves at the
27 will and pleasure of the commission. The Vice Chancellor for Health Sciences shall coordinate
28 the West Virginia University School of Medicine, the Marshall University School of Medicine and
29 the West Virginia School of Osteopathic Medicine and also shall provide assistance to the
30 governing boards on matters related to medical education and health sciences. The Vice
31 Chancellor for Health Sciences shall perform all duties assigned by the chancellor, the
32 commission and state law. In the case of a vacancy in the office of Vice Chancellor of Health
33 Sciences, the duties assigned to this office by law are the responsibility of the chancellor or a
34 designee.

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

37 ~~(h) The commission shall employ a Vice Chancellor for Human Resources pursuant to~~
38 ~~section two-a, article four of this chapter. The person serving as senior director of human~~
39 ~~resources by the commission on January 1, 2011, is Vice Chancellor for Human Resources on~~
40 ~~the effective date of this section. Additionally, the commission shall employ a qualified generalist~~
41 ~~in the field of human resources pursuant to section two-a, article four of this chapter. The human~~
42 ~~resources generalist shall report to the Vice Chancellor for Human Resources~~

43 ~~(i)~~ (h) The commission may employ a Vice Chancellor for State Colleges who serves at
44 the will and pleasure of the commission. At a minimum, the Vice Chancellor for State Colleges
45 shall perform the following duties:

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

48 (2) Advise, assist and consult regularly with the presidents and governing boards of each
49 state college;

50 (3) Serve as an advocate and spokesperson for the state colleges to represent them and

51 to make their interests, views and issues known to the chancellor, the commission and
52 governmental agencies;

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

54 In addition, the Vice Chancellor for State Colleges shall provide staff assistance to the
55 presidents and governing boards to the extent practicable.

56 ~~(j)~~ (i) On behalf of the commission, the chancellor may enter into agreements with any
57 state agency or political subdivision of the state, any state institution of higher education or any
58 other person or entity to enlist staff assistance to implement the powers and duties assigned by
59 the commission or by state law.

60 ~~(k)~~ (j) The chancellor is responsible for the daily operations of the commission and has the
61 following responsibilities relating to the commission and the governing boards under its
62 jurisdiction:

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

64 (2) To develop and submit annual reports on the implementation plan to achieve the goals
65 and objectives set forth in section one-a, article one and article one-d of this chapter, and in the
66 compacts;

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

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

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

77 ~~(j)~~ (k) The chancellor shall be reimbursed for all actual and necessary expenses incurred
78 in the performance of all assigned duties and responsibilities.

79 ~~(m)~~ (l) The chancellor, with the commission, advises the Legislature on matters of higher
80 education in West Virginia. The chancellor shall work closely with the Legislative Oversight
81 Commission on Education Accountability and with the elected leadership of the state to ensure
82 that they are fully informed about higher education issues and that the commission fully
83 understands the goals, objectives and priorities for higher education that the Legislature has
84 established by law.

85 ~~(n)~~ (m) The chancellor may design and develop for consideration by the commission new
86 statewide or region-wide initiatives in accordance with the goals set forth in section one-a, article
87 one and article one-d of this chapter, and the public policy agenda articulated by the commission.
88 In those instances where the initiatives to be proposed have a direct and specific impact or
89 connection to community and technical college education as well as to baccalaureate and
90 graduate education, the Chancellor for Higher Education and the Chancellor for Community and
91 Technical College Education shall design and develop the initiatives jointly for consideration by
92 the commission and the council.

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

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

99 (2) Appropriate coordination of missions and programs.

ARTICLE 4. GENERAL ADMINISTRATION.

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

1 (a) The council and commission each shall employ a chancellor to assist in the

2 performance of their respective duties and responsibilities subject to the following conditions:

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

4 (2) Neither chancellor may hold or retain any other administrative position within the
5 system of higher education while employed as chancellor.

6 (3) Each chancellor shall carry out the directives of the body by whom employed and shall
7 collaborate with that body in developing policy options.

8 (4) The commission is responsible to the council and the Chancellor for Community and
9 Technical College Education for providing services in areas essential to exercising the powers
10 and duties assigned to the council by law. The commission may not charge the council any fee
11 for the provision of these essential services. The service areas include, but are not limited to, legal
12 services, research, technology, computing, finance and facilities, academic affairs,
13 telecommunications, human resources, student services and any other general areas the council
14 considers to be essential to the exercise of its legal authority. The services are provided under
15 the general supervision of the Vice Chancellor for Administration.

16 (5) For the purpose of developing or evaluating policy options, the chancellors may
17 request the assistance of the presidents and staff employed by the governing boards under their
18 respective jurisdictions.

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

23 (c) Suitable offices for the Vice Chancellor of Administration ~~the Vice Chancellor for~~
24 ~~Human Resources~~ and other staff shall be provided in Kanawha County.

§18B-4-2a. Development of benefit programs; assistance to organizations.

1 ~~(a) By and with the advice and consent of the Council for Community and Technical~~
2 ~~College Education, the commission shall employ a Vice Chancellor for Human Resources who~~

3 ~~may not be dismissed without the consent of the council. Any vacancy occurring in this position~~
4 ~~shall be filled in accordance with this section.~~

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

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

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

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

20 ~~(d) The vice chancellor supervises employees at the commission offices involved in~~
21 ~~human resources functions, including the professional, administrative, clerical and other~~
22 ~~employees necessary to carry out assigned powers and duties. In consultation with the Vice~~
23 ~~Chancellor for Administration and the chancellors, the vice chancellor shall delineate staff~~
24 ~~responsibilities as considered desirable and appropriate.~~

25 ~~(e) The vice chancellor provides support to the chancellors and organizations on a highly~~
26 ~~diverse range of issues, including assisting them to develop a culture of constant improvement in~~
27 ~~a rapidly changing, complex market. Duties of the position include, but are not limited to, the~~
28 ~~following:~~

29 ~~(1) Developing and implementing business-related initiatives involving organizational~~
30 ~~design, labor cost management, executive recruitment and compensation, leadership and~~
31 ~~management development, human resources data and technology, and compensation and~~
32 ~~benefits programs;~~

33 ~~(2) Chairing, or designating The chancellor or a qualified designee to shall:~~

34 ~~(1) Chair the Job Classification Committee and the Compensation Planning and Review~~
35 ~~Committee established by sections four and five, article nine-a of this chapter;~~

36 ~~(3) Assuming (2) Assume~~ responsibility for coordinating retirement benefits programs for
37 all employees, including designing these programs, and for supporting each higher education
38 organization in implementing the programs;

39 ~~(4) Assuming responsibility for coordinating classification and compensation programs for~~
40 ~~classified employees, including designing these programs, and for supporting each higher~~
41 ~~education organization in implementing the programs;~~

42 ~~(5) Assisting (3) Assist,~~ as directed or requested by an organization, organizations with
43 classification and/or compensation programs for faculty and/or nonclassified employees,
44 including, as appropriate, design and implementation of the programs; and

45 ~~(6) Maintaining consistent human resources information systems and selecting and~~
46 ~~supervising benefits consultants, brokers, trustees and necessary legal assistants;~~

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

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

54 ~~(9) (4)~~ As requested by organizations, assist with carrying out the following duties related

55 to training and development:

56 (A) Analyzing and determining training needs of organization employees and formulating
57 and developing plans, procedures and programs to meet specific training needs and problems.

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

60 (C) Planning, conducting and coordinating management inventories, appraisals,
61 placement, counseling and training;

62 (D) Coordinating participation by all employees in training programs developed internally
63 or provided by outside contractors; and

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

66 ~~(10) As requested, assisting boards of Governors and/or presidents in conducting~~
67 ~~performance reviews of personnel who administer human resources functions at each~~
68 ~~organization in relation to best practices pursuant to articles seven, eight, nine and nine-a of this~~
69 ~~chapter and rules of the commission and council. Human resources personnel at each~~
70 ~~organization shall be evaluated at least once within each three-year period. Copies of evaluations~~
71 ~~will be submitted to the Vice Chancellor who shall analyze the results of these evaluations and~~
72 ~~target training and professional development to identified areas of deficiency.~~

73 ~~(f) To assist in performing the duties of vice chancellor, the commission, with the consent~~
74 ~~of the council, shall create the following positions, and fill the positions beginning July 1, 2016,~~
75 ~~with well-qualified and appropriately credentialed individuals who will report to the Vice Chancellor~~
76 ~~for Human Resources and work collaboratively with governing boards and their employees at all~~
77 ~~levels:~~

78 ~~(1) A Generalist/Manager who is responsible for a wide range of human resources~~
79 ~~management, the Human Resources Information System, reporting and program development~~
80 ~~activities;~~

81 ~~(2) A Director of Classification and Compensation who is responsible for maintaining job~~
 82 ~~classification systems, assisting organizations with classification and compensation matters,~~
 83 ~~coordinating compensation studies with the compensation planning and review committee and~~
 84 ~~external vendors, and conducting annual compensation program updates or market reviews;~~

85 ~~(3) A Training and Development Specialist who is responsible for assessing training~~
 86 ~~needs, and for planning, designing, developing, implementing and/or coordinating delivery of~~
 87 ~~training and development programs and activities as required in subdivision (9), subsection (e) of~~
 88 ~~this section 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 and articles eight, nine and nine-a
 2 of this chapter is to establish ~~a statewide, integrated higher education~~ basic human resources
 3 ~~system policies applicable to public higher education~~ capable of, but not limited to, assisting the
 4 governing boards in meeting the following objectives:

5 (1) Implementing contemporary programs and practices to reward and incentivize
 6 performance and enhance employee engagement;

7 ~~(4) (2)~~ Providing benefits to the citizens of the State of West Virginia by supporting the
 8 public policy agenda as articulated by state policymakers;

9 ~~(2) (3)~~ Assuring fiscal responsibility by making the best use of scarce resources;

10 ~~(3) (4)~~ Promoting fairness, accountability, credibility, and transparency in personnel
 11 decision making;

12 ~~(4) (5)~~ Reducing or, wherever possible, eliminating arbitrary and capricious decisions
 13 affecting employees of higher education organizations as defined in section two, article nine-a of
 14 this chapter;

15 ~~(5) (6)~~ Creating a stable, self-regulating human resources ~~system~~ policies capable of
 16 evolving to meet changing needs;

17 ~~(6)~~ (7) Providing for institutional flexibility with meaningful accountability;
18 ~~(7)~~ (8) Adhering to federal and state laws;
19 ~~(8)~~ (9) Adhering to duly promulgated and adopted rules; and
20 ~~(9)~~ (10) ~~Implementing~~ Enhancing the sharing of best practices throughout the state higher
21 education system.

22 ~~(40)~~ (11) Providing current, reliable data to governing boards, the commission, the council,
23 the Governor and the Legislature to inform the decision-making process of these policymakers.

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

31 (c) It is the intent of the Legislature to establish a human resources strategy that is fair,
32 accountable, credible, and transparent ~~and systematic~~. In recognition of the importance of these
33 qualities, the human resources strategy outlined in this article, together with articles eight ~~nine~~
34 and nine-a of this chapter, is designated and may be cited as "FACTS FACT for Higher
35 Education".

36 (d) It is the intent of the Legislature to require each higher education organization to
37 achieve full funding of the minimum salary ~~schedule~~ levels for classified employees established
38 in section ~~three~~ six, article ~~nine~~ nine-a of this chapter. ~~A higher education organization, as defined~~
39 ~~in section two, article nine-a of this chapter, is subject to the provisions of article nine of this~~
40 ~~chapter until full funding is reached.~~

41 ~~(e) It is further the intent of the Legislature to encourage strongly that each organization~~
42 ~~dedicate a portion of future tuition increases to fund the classified salary schedule, and after full~~

43 ~~funding of the salary schedule is achieved, to move toward meeting salary goals for faculty,~~
44 ~~classified and nonclassified employees.~~

§18B-7-2. Definitions.

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

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

7 (2) "Compensation" means cash provided by an employer to an employee for services
8 rendered.

9 (3) "Compensatory time" and "compensatory time off" mean hours during which the
10 employee is not working, which are not counted as hours worked during the applicable work week
11 or other work period for purposes of overtime compensation and for which the employee is
12 compensated at the employee's regular rate of pay.

13 (4) "Employee classification" or "employee class" means those employees designated as
14 classified employees; nonclassified employees, including presidents, chief executives and top
15 level administrators and faculty, as these terms are defined in this article and articles eight, nine
16 and nine-a of this chapter.

17 (5) "Full-time" means ~~an~~ a regular employee whose employment, if continued,
18 accumulates to a minimum total of one thousand forty hours during a calendar year and extends
19 over at least nine months of a calendar year

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

§18B-7-3. Reducing workforce.

1 (a) Definitions for terms used in this section have the meanings ascribed to them in section
2 two, article one of this chapter and section two, article nine of this chapter, except that, unless
3 clearly noted otherwise, this section applies only to ~~an~~ a regular employee ~~(1)~~ who is classified
4 and whose employment, if continued, accumulates to a minimum total of one thousand forty hours
5 during a calendar year and extends over at least nine months of a calendar year. ~~or~~

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

10 (b) All decisions by an organization or its agents concerning reductions in workforce of
11 full-time classified employees ~~whether by temporary furlough or permanent termination~~ shall be
12 made in accordance with this section and pursuant to a rule adopted by the applicable governing
13 board of an organization, after consultation with the applicable staff council of an organization.

14 (1) For layoffs ~~by classification~~ for reason of lack of funds or work, or abolition of position
15 or material changes in duties or organization, ~~and for recall of employees laid off,~~ the institution
16 may layoff the incumbent in the position being eliminated. In the case of elimination of some but
17 not all of the positions of the same job title, consideration shall may be given to an employee's
18 documented quality of work performance as demonstrated in performance evaluations of record
19 (including, but not limited to, disciplinary records), skills, seniority as measured by ~~permanent~~
20 ~~employment in the service of the state system of higher education~~ years of service, or other
21 factors.

22 (2) If the organization desires to lay off a more senior employee, the organization may
23 offer to the more senior employee a severance package, the value of which shall not exceed the
24 more senior employee's salary for one year. ~~it shall demonstrate that the senior employee cannot~~
25 ~~perform any other job duties held by less senior employees of that organization in the same job~~
26 ~~class or any other equivalent or lower job class for which the senior employee is qualified. If an~~

27 ~~employee refuses to accept a position in a lower job class, the employee retains all rights of recall~~
28 ~~provided in this section.~~

29 ~~(3) If two or more employees accumulate identical seniority, the priority is determined by~~
30 ~~a random selection system established by the employees and approved by the organization.~~

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

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

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

40 ~~(3) An employee on the preferred recall list does not forfeit the right to recall by the~~
41 ~~organization if compelling reasons require the employee to refuse an offer of reemployment by~~
42 ~~the organization.~~

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

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

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

51 ~~(e) A nonexempt classified employee is one to whom the provisions of the federal Fair~~
52 ~~Labor Standards Act, as amended, apply. A nonexempt classified employee, who applies and~~

53 ~~meets the minimum qualifications for a nonexempt job opening at the organization where currently~~
54 ~~employed, whether the job is a lateral transfer or a promotion, shall be transferred or promoted~~
55 ~~before a new person is hired.~~

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

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

61 ~~(3) If more than one qualified, nonexempt classified employee applies, the best-qualified~~
62 ~~nonexempt classified employee is awarded the position. In instances where the classified~~
63 ~~employees are equally qualified, the nonexempt classified employee with the greatest amount of~~
64 ~~continuous seniority at that organization is awarded the position.~~

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

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

69 ~~(1) An employee at an organization under the jurisdiction of the council may not displace~~
70 ~~an employee of an organization under the jurisdiction of the commission.~~

71 ~~(2) An employee at an organization under the jurisdiction of the commission may not~~
72 ~~displace an employee of an organization under the jurisdiction of the council.~~

73 ~~(3) An employee performing a dual service for a formerly administratively linked~~
74 ~~community and technical college and a former sponsoring institution under the jurisdiction of the~~
75 ~~commission is an employee of the institution under the jurisdiction of the commission if that~~
76 ~~institution receives a fee from the community and technical college for the service performed by~~
77 ~~the employee.~~

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

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

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

15 (b) Subject to legislative appropriation therefor, the commission and council shall ~~provide~~
 16 promote and facilitate additional, regular, training and professional development for employees
 17 engaged in human resources-related activities at all organizations. The training and professional
 18 development:

19 (1) Shall be ~~mandatory with appropriate~~ developed with emphasis on distance learning, in
 20 consideration ~~given~~ to limiting travel demands on employees; and

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

§18B-7-8. Reporting.

1 (a) *Annual Personnel reports.* --

2 (1) ~~No later than Beginning~~ December 1, 2013 2020 and ~~annually~~ every five years

3 thereafter, the commission and council shall report to the Legislative Oversight Commission on
 4 Education Accountability addressing the following issues:

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

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

13 (2) The commission and council shall prepare a human resources report card summarizing
 14 the performance of organizations on key human resources measures established by the
 15 commission and council. The report card shall be presented to the Legislative Oversight
 16 Commission on Education Accountability ~~annually~~ every five years, beginning December 1, 2020,
 17 and shall be made available to the general public. At a minimum, the human resources report
 18 card shall contain the following data:

19 (A) Human resources department metrics by organization:

20 ~~(i) Number of human resources staff;~~

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

22 ~~(iii) Percentage of human resources staff functioning in supervisory roles and percentage~~
 23 ~~in administrative roles;~~

24 ~~(iv) Number of positions reporting to the head of human resources;~~

25 ~~(v)(i) Areas of human resources functions outsourced to external entities;~~

26 ~~(vi)(ii) Total expenses per full-time equivalent employee; and~~

27 ~~(vii)(iii) Tuition revenue per full-time equivalent employee.~~

28 (B) Human resources expense data:

- 29 (i) Ratio of human resources expenses to operating expenses; and
30 ~~(ii) Ratio of human resources expenses to number of full-time equivalent employees; and~~
31 ~~(iii)~~(ii) Total human resources expense per organization employee.

32 (C) Compensation data:

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

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

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

39 (D) System metrics:

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

41 (ii) Comparisons of classified and nonclassified employee salaries at each organization to
42 current market averages.

43 ~~(E) An account of the total amount, type of training or professional development provided,~~
44 ~~the number of employees who participated and the overall cost of the training and professional~~
45 ~~development provided to employees pursuant to section six of this article; and~~

46 ~~(F) Other measures the commission or council considers appropriate to assist~~
47 ~~policymakers in evaluating the degree of success in implementing best human resources~~
48 ~~practices by higher education organizations.~~

49 (b) *Job classification system report.* --

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

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

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

59 (c) It is the responsibility of the head of human resources for each organization to prepare
 60 and submit to the president or chief executive officer all human resources data requested by the
 61 commission and council. The president or executive officer of each organization shall submit the
 62 requested data at times established by the commission and council.

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

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

67 (2) With the exception of the ~~annual~~ human resources report card and any other report
 68 designated as due no later than a date certain, the commission and council may combine two or
 69 more personnel reports if the dates on which they are due to the Legislature fall within a sixty-day
 70 period.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-7. Authority of Governing Boards relating to faculty.

1 Notwithstanding any other provision of this code to the contrary, a governing board may
 2 adopt a rule relating to the faculty. The provisions of any rule adopted by a governing board
 3 preempt any conflicting rule adopted by the commission or the council.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

§18B-9A-2. Definitions.

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

3 (1) "Classification system" means the process by which jobs, job titles, career ladders and
4 assignment to pay grades are determined.

5 (2) "Classified employee" or "employee" means a regular full-time or regular part-time
6 employee of an organization who: ~~holds a position that is assigned a particular job title and pay~~
7 ~~grade in accordance with the personnel classification and compensation system established by~~
8 ~~this article or by the commission and council~~ (i) Is paid on an hourly basis and is a nonexempt
9 employee subject to the provisions of the Fair Labor Standards Act; and (ii) is not otherwise a
10 nonclassified employee designated pursuant to subdivision (11) of this section: *Provided, That*
11 any employee of an organization who was a classified employee as of January 1, 2017, retains
12 that status unless otherwise deemed a nonclassified employee pursuant to the provisions of
13 subparts (A) through (D) of subdivision (11) of this section.

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

16 (4) "Job description" or "position description" means a summary of the most important
17 features of a job, including the general nature and level of the work performed.

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

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

24 (7) "Job specification" means the generic description of a group of jobs assigned a
25 common job title in the classification system. The job specification contains a brief summary of
26 the purpose of the job; the most common duties and responsibilities performed by positions
27 holding the title; knowledge, skills and abilities necessary to perform the work; and minimum
28 qualifications required for positions assigned the title.

29 (8) "Job title" means the descriptive name for the total collection of tasks, duties and
30 responsibilities assigned to one or more individuals whose positions have the same nature of
31 work performed at the same level.

32 (9) "Job worth hierarchy" means the perceived internal value of jobs in relation to each
33 other within an organization.

34 (10) "Midpoint differential" means the difference in wage rates paid in the midpoints of two
35 adjacent pay grades. A midpoint differential is calculated by taking the difference between the two
36 adjacent midpoints as a percentage of the lower of the midpoints.

37 (11) "Nonclassified employee" means, an employee of an organization ~~who holds a~~
38 ~~position that is not assigned a particular job and job title within the classification system~~
39 ~~established by this article and article nine of this chapter, and by duly promulgated and adopted~~
40 ~~rules of the commission and council and~~ who meets one or more of the following criteria:

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

42 (B) Reports directly to the president or chief executive officer of the organization; ~~or~~

43 (C) Is in a position considered by the president or designee to be critical to the institution
44 pursuant to policies or decisions adopted by the governing board;

45 (D) Is in an information technology-related position;

46 (E) Is hired after July 1, 2017, and is exempt from the provisions of the Fair Labor
47 Standards Act at the time of hire or anytime thereafter; or

48 (F) Was in a nonclassified position as of January 1, 2017.

49 Unless otherwise established by action of the institution where employed, a nonclassified
50 employee serves at the will and pleasure of the organization, which authority may be delegated
51 by act of the board.

52 (12) "Organization" means the commission, the council, an agency or entity under the
53 respective jurisdiction of the commission or the council or a state institution of higher education
54 as defined in section two, article one of this chapter.

55 (13) "Pay grade" means the level to which a job is assigned within a job worth hierarchy
56 as a result of job evaluation.

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

59 (15) "Position information questionnaire" or "PIQ" means a tool used to gather specific job
60 information for a specific position held by an individual, and used for the purposes of evaluating
61 the position for determination of job title and pay grade. The PIQ is used to gather information
62 used to assess the compensable factors of knowledge, experience, complexity and problem
63 solving, freedom of action, scope and effect, breadth of responsibility, intra-systems contacts,
64 external contacts, direct supervision of personnel, indirect supervision of personnel and health,
65 safety and physical considerations.

66 (16) "Pay range spread" means the difference in the minimum and maximum rate of pay
67 for a pay grade expressed as a percentage.

**§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 article, the commission and
2 council jointly shall establish and maintain a compensation planning and review committee.

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

6 The rule shall contain the following requirements related to the compensation planning
7 and review committee:

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

12 (2) A requirement that an organization may have no more than two members serving on
13 the committee at any time and the combined membership representing various groups or divisions
14 within or affiliated with an organization in total may not constitute a majority of the membership;
15 and

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

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

22 (d) An institution may not have a majority of the committee members, and the combined
23 membership representing various groups or divisions within or affiliated with an organization in
24 total may not constitute a majority of the membership.

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

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

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

31 ~~(3) (2) Overseeing the annual internal market review;~~

32 ~~(4) (3) Meeting at least annually with the Job Classification Committee to discuss~~
33 ~~benchmark jobs to be included in salary surveys, market "hot jobs" that may require a temporary~~
34 ~~salary adjustment, results of job family reviews and assessment of current job titles within the~~
35 ~~classification system for market matches and other issues as the ~~Vice Chancellor for Human~~~~
36 ~~Resources, Chancellor or chancellor's designee, in consultation with the chancellors, determines~~
37 ~~to be appropriate; and~~

38 ~~(5)~~ (4) Performing other duties as assigned by the commission and council or as necessary
39 or expedient to maintain an effective classification and compensation system.

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

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

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

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

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

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

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

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

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

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

16 (d) The commission and council jointly shall ~~contract with an external vendor to conduct a~~
17 ~~classified employee market salary study. The study shall be completed by January 31, 2016, and~~
18 ~~on January 31 every fifth year thereafter. At the conclusion of each study, or for good cause, the~~
19 use workforce compensation data provided by Workforce West Virginia and other compensation
20 data as is readily available from national recognized sources, including compensation data of

21 CUPA-HR, to establish the appropriate external market conditions of classified positions. The
22 commission and council, in consultation with the Compensation Planning and Review Committee,
23 may take any combination of the following actions:

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

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

27 or

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

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

33 (f) Annually, the commission and council may approve a minimum salary amount that sets
34 forth a compensation level for each pay grade below which no organization employee may be
35 paid, subject to available funds.

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

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

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

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

1 (a) Notwithstanding any provision of law or rule to the contrary, the commission and

2 council jointly shall design, develop, implement and administer the classified personnel system of
3 classification and compensation pursuant to this article and articles seven, eight and nine of this
4 chapter.

5 (b) *System rule.* --

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

11 (1) *Organization accountability.* --

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

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

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

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

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

25 (iii) The governing board shall correct the major deficiency within four months or longer
26 provided the length of time is agreed upon by the governing board and the commission or council
27 as applicable, and shall notify the commission or council, as appropriate, when the deficiency has

28 been corrected.

29 (iv) If the governing boards fail to correct the major deficiency or fail to notify the
30 commission or council, as appropriate, that the deficiency has been corrected within the agreed
31 upon period, the commission or council ~~shall~~ may apply sanctions.

32 Sanctions may include, but are not limited to, ~~suspending new hiring by the organization~~
33 ~~and~~ prohibiting compensation increases for key administrators who have authority over the areas
34 of major deficiency until the identified deficiencies are corrected.

35 (2) *Classified employee classification and compensation.* -- The classified employee
36 classification and compensation system rule shall establish a classification and compensation
37 system to accomplish the following objectives:

38 (A) Allowing for performance and other objective, measurable factors such as technical
39 expertise, education, years of experience in higher education and experience above position
40 requirements to be considered in compensation decisions;

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

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

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

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

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

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

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

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

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

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

74 (c) *Organization rules.* --

75 (1) Each organization shall promulgate and adopt a rule or rules in accordance with the
76 provisions of section six, article one of this chapter to implement requirements contained in the
77 classification and compensation system rule or rules of the commission and council. The
78 commission and council shall provide a model personnel rule for the organizations under their
79 jurisdiction and shall provide technical assistance in rulemaking as requested.

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

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

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

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

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

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

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

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

102 ~~(6) Notwithstanding any provision of this code to the contrary, each chancellor, or his or~~
103 ~~her designee, has the authority and the duty to review each classification and compensation rule~~
104 ~~promulgated by an organization under his or her jurisdiction and to recommend changes to the~~
105 ~~rule to bring it into compliance with state and federal law, commission and council rules or~~

106 ~~legislative, commission and council intent. Each chancellor may reject or disapprove any rule, in~~
107 ~~whole or in part, if he or she determines that it is not in compliance with law or rule or if it is~~
108 ~~inconsistent with legislative, commission and council intent.~~

ARTICLE 9B. ORGANIZATION PERSONNEL RULES.

§18B-9B-1. Flexibility to adopt personnel rules; emergency rule authorized.

1 (a) West Virginia University; Marshall University; or any other organization that receives
2 approval of the commission or council, as appropriate; may, after consultation with staff council
3 of the applicable organization, file a rule or rules to implement articles seven and eight of this
4 chapter, and upon the adoption any rules promulgated by the commission or council under articles
5 seven and eight of this chapter are inapplicable to the organization.

6 (b) West Virginia University; Marshall University; or any other organization that receives
7 approval of the commission or council, as appropriate, may establish a classification and
8 compensation rule, after consultation with the staff council of the applicable organization, that
9 incorporates best human resources practices and addresses the areas of organization
10 accountability, employee classification and compensation, performance evaluation, reductions in
11 force, and development of organization policies, and upon the adoption the provisions of article
12 nine-a of this chapter and any rule promulgated by the commission or the council thereto, is
13 inapplicable to the extent it conflicts with the rule promulgated by the organization: *Provided, That*
14 any rule adopted by an organization shall use the definitions of classified and nonclassified
15 employees established in section two of article nine-a of this chapter.

16 (c) Any rule adopted by an organization pursuant to subsection (b) of this section shall
17 address the following:

18 (1) *Employee classification and compensation.* -- The rule proposed pursuant to this policy
19 shall establish a classification and compensation system to accomplish the following objectives,
20 including best practices consistent with those objectives:

21 (A) Providing opportunities for employee advancement based on performance and other
22 objective, measurable factors including education, years of experience, technical expertise, and
23 experience above position requirements;

24 (B) Identifying the factors to be used to classify jobs and their relative values or
25 comparable best practice and determining the requirements that are necessary to assign a job to
26 a particular salary level; and

27 (C) Establishing an objective standard to be used in determining when a job description
28 or a position description is up-to-date.

29 (2) Performance evaluations. -- The rule shall provide for developing and implementing a
30 consistent, objective performance evaluation model and shall mandate that training in conducting
31 performance evaluations be provided for all organization personnel who hold supervisory
32 positions.

33 (3) Management shall meet at least quarterly with representatives of staff council to
34 discuss the implementation and effectiveness of any rule adopted by an organization pursuant to
35 articles seven, eight, nine-a and nine-b of this chapter and may make recommendations to the
36 president or board of Governors of an organization to address any concerns or issues identified
37 by staff council;

38 (4) The rule may provide for differential pay for certain employees who work different shifts,
39 weekends or holidays and for differential treatment for employees; and

40 (5) The rule shall provide for an external review of human resource practices at the
41 organization at least once every five years, relating to compliance with the applicable provisions
42 of article seven, eight, nine-a and nine-b of this chapter, including provisions that the staff council
43 have an opportunity to speak with the external Auditors before the start of the audit and after its
44 completion.

NOTE: The purpose of this bill is to provide more flexibility in human resources and

personnel to institutions of higher education. The bill strikes language mandating a temporary salary schedule and redefines classified and nonclassified employees. It removes bumping rights based upon seniority. The bill gives WVU and MU the right to develop their own classification and compensation systems and gives other institutions the option to apply to the HEPC or CTCC for the same right. The bill enables WVU, MU and any other authorized institution to develop rules for classification, compensation and human resources. The mandate for a Vice Chancellor of Human Resources is removed, along with all references thereto. Obsolete provisions are eliminated.

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