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WEST VIRGINIA LEGISLATURE

WEST VIRGINIA
SECRETARY OF STATE

EIGHTIETH LEGISLATURE

REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 330

(SENATORS PLYMALE, WELLS, JENKINS, FOSTER,
BROWNING, STOLLINGS AND BEACH, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]

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(SENATORS PLYMALE, WELLS, JENKINS, FOSTER,
BROWNING, STOLLINGS AND BEACH, *original sponsors*)

[Passed March 12, 2011; in effect ninety days from passage.]

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

adding thereto a new section, designated §18B-8-2; to amend and reenact §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; to amend said code by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8; and to amend and reenact §18B-10-1 of said code, all relating to public higher education personnel generally; state organizations of higher education; public higher education governance; repealing sunset provision for pilot investment program for Marshall University and West Virginia University; extending authority to increase certain types of investment under certain circumstances; specifying and clarifying rule-making procedures; specifying certain powers and duties of certain higher education organizations; requiring certain governing boards to reach certain graduation rates by certain date; establishing classification and compensation for certain employees; providing legislative purposes and intent; providing certain definitions; requiring creation of certain professional staff positions; setting forth minimum qualifications and specifying duties; requiring organization rulemaking; authorizing certain supplemental retirement, health and welfare benefit plans for certain employees; providing for certain employer and employee matches; authorizing employee payroll deductions; requiring establishment of continuing education and professional development programs for certain employees; setting forth certain employment practices; requiring certain periodic reports; specifying data to be included in reports and designating report due dates; providing certain exceptions to report due dates; requiring periodic reviews of human resources functions at certain higher education organizations; setting forth purposes of reviews; specifying review criteria and designating completion dates; requiring prior notice of reviews and setting forth certain exceptions; authorizing compensatory time off for certain employees in certain instances; setting forth conditions; defining "nonclassified" employees; limiting percentage of employees designated nonclassified and providing certain exceptions; establishing formula for calculating percentage; providing effective date for meeting percentage limits and requiring compliance reports; authorizing certain employment by mutual agreement; setting forth terms, conditions and

applicability of agreements; requiring probationary period for certain employees; authorizing catastrophic leave banks and leave transfer for certain employees; setting forth terms and conditions for participation; codifying certain current practices; authorizing merit salary increases for certain employees under certain conditions; requiring study of certain employment practices; requiring report and specifying data and report due date; requiring faculty salary rules and providing for salary increases in certain instances; authorizing sabbatical leaves for certain professional personnel; specifying terms and conditions for participation; maintaining certain rights and benefits during leaves of absence under certain circumstances; requiring definition of certain terms; requiring notice of employment decisions to probationary faculty members by certain date and providing for hearings in certain instances; stating legislative intent regarding funding for certain employee salary schedules; specifying applicability of certain statutes; establishing certain terms and conditions and providing certain exceptions; providing formulas for making certain salary calculations; requiring certification of certain higher education organizations relating to certain salary funding requirements; specifying applicability of certain rules; requiring review and approval process for certain rules and specifying responsibilities of certain professional personnel relating to rulemaking; providing for funding certain salary schedules; specifying certain consequences and sanctions and providing exceptions; providing short title; requiring maintenance of uniform job classification system; establishing job classification committee and specifying organization, powers and duties; assigning certain other powers and duties relating to job classification; establishing compensation planning and review committee and specifying organization, powers and duties; providing for establishment of market salary structures and minimum salary schedules; requiring periodic updates and specifying certain other related powers and duties; providing for periodic market salary studies and specifying application of study findings; requiring certain salary comparisons and establishing limit on variations of average salaries among employee classes; specifying authority and duty of Higher Education Policy Commission and Council for Community and

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

Be it enacted by the Legislature of West Virginia:

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

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

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

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

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

14 (c) Moneys of a university that may be invested with its
 15 foundation pursuant to this section are those subject to the
 16 administrative control of the university that are collected
 17 under an act of the Legislature for specific purposes and do
 18 not include any funds made available to the university from
 19 the state General Revenue Fund or the funds established in
 20 sections eighteen or eighteen-a, article twenty-two, chapter
 21 twenty-nine of this code. Moneys permitted to be invested
 22 under this section may be aggregated in an investment fund
 23 for investment purposes.

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

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

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

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

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

51 (1) Preservation of capital;

52 (2) Diversification;

53 (3) Risk tolerance;

54 (4) Rate of return;

55 (5) Stability;

56 (6) Turnover;

57 (7) Liquidity; and

58 (8) Reasonable cost of fees.

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

63 (g) The amendments to this section in the second extraordi-
64 nary session of the Legislature in 2010 shall apply retroac-
65 tively so that the authority granted by this section shall be
66 construed as if that authority did not expire on July 1, 2010.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

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

4 (1) “Administratively linked community and technical
5 college” means a state institution of higher education
6 delivering community and technical college education and
7 programs which has maintained a contractual agreement to
8 receive essential services from another accredited state
9 institution of higher education prior to July 1, 2008;

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

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

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

28 (5) "Chancellor" means the Chancellor for Higher Educa-
29 tion where the context refers to a function of the Higher
30 Education Policy Commission. "Chancellor" means the
31 Chancellor for Community and Technical College Education
32 where the context refers to a function of the West Virginia
33 Council for Community and Technical College Education;

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

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

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

47 (9) "Community and technical college", in the singular or
48 plural, means the free-standing community and technical
49 colleges and other state institutions of higher education

50 which deliver community and technical college education.
51 This definition includes Blue Ridge Community and Techni-
52 cal College, Bridgemont Community and Technical College,
53 Eastern West Virginia Community and Technical College,
54 Kanawha Valley Community and Technical College,
55 Mountwest Community and Technical College, New River
56 Community and Technical College, Pierpont Community and
57 Technical College, Southern West Virginia Community and
58 Technical College, West Virginia Northern Community and
59 Technical College and West Virginia University at
60 Parkersburg;

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

65 (11) “Community and technical college education pro-
66 gram” means any college-level course or program beyond the
67 high school level provided through a public institution of
68 higher education resulting in or which may result in a two-
69 year associate degree award including an associate of arts,
70 an associate of science and an associate of applied science;
71 certificate programs and skill sets; developmental education;
72 continuing education; collegiate credit and noncredit
73 workforce development programs; and transfer and bacca-
74 laurate parallel programs. All programs are under the
75 jurisdiction of the council. Any reference to “post-secondary
76 vocational education programs” means community and
77 technical college education programs as defined in this
78 subsection;

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

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

- 87 (14) "Essential conditions" means those conditions which
88 shall be met by community and technical colleges as pro-
89 vided in section three, article three-c of this chapter;
- 90 (15) "Free-standing community and technical colleges"
91 means Southern West Virginia Community and Technical
92 College, West Virginia Northern Community and Technical
93 College, and Eastern West Virginia Community and Techni-
94 cal College, which may not be operated as branches or off-
95 campus locations of any other state institution of higher
96 education;
- 97 (16) "Governing boards" or "boards" means the institu-
98 tional boards of governors created by section one, article
99 two-a of this chapter;
- 100 (17) "Higher Education Policy Commission", "Policy
101 Commission" or "Commission" means the commission
102 created by section one, article one-b of this chapter;
- 103 (18) "Independent community and technical college"
104 means a state institution of higher education under the
105 jurisdiction of the Council which is independently accred-
106 ited, is governed by its own independent governing board,
107 and may not be operated as a branch or off-campus location
108 of any other state institution of higher education. This
109 definition includes Blue Ridge Community and Technical
110 College, Bridgemont Community and Technical College,
111 Eastern West Virginia Community and Technical College,
112 Kanawha Valley Community and Technical College,
113 Mountwest Community and Technical College, New River
114 Community and Technical College, Pierpont Community and
115 Technical College, Southern West Virginia Community and
116 Technical College, West Virginia Northern Community and
117 Technical College, and West Virginia University at
118 Parkersburg;
- 119 (19) "Institutional compact" means the compact between
120 the commission or council and a state institution of higher
121 education under its jurisdiction, as described in section
122 seven, article one-d of this chapter;

123 (20) “Institutional operating budget” or “operating
124 budget” means for any fiscal year an institution’s total
125 unrestricted education and general funding from all sources,
126 including, but not limited to, tuition and fees and legislative
127 appropriation, and any adjustments to that funding as
128 approved by the commission or council based on compari-
129 sons with peer institutions or to reflect consistent compo-
130 nents of peer operating budgets;

131 (21) “Peer institutions”, “peer group” or “peers” means
132 public institutions of higher education used for comparison
133 purposes and selected by the commission pursuant to section
134 three, article one-a of this chapter;

135 (22) “Rule” or “rules” means a regulation, standard, policy
136 or interpretation of general application and future effect;

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

145 (24) “State college” means Bluefield State College, Con-
146 cord University, Fairmont State University, Glenville State
147 College, Shepherd University, West Liberty University or
148 West Virginia State University;

149 (25) “State institution of higher education” means any
150 university, college or community and technical college under
151 the jurisdiction of a governing board as that term is defined
152 in this section;

153 (26) “Statewide network of independently accredited
154 community and technical colleges” or “community and
155 technical college network” means the state institutions of
156 higher education under the jurisdiction of the West Virginia

157 Council for Community and Technical College Education
158 which are independently accredited, each governed by its
159 own independent governing board, and each having a core
160 mission of providing affordable access to and delivering high
161 quality community and technical education in every region
162 of the state;

163 (27) "Vice Chancellor for Administration" means the
164 person employed in accordance with section two, article four
165 of this chapter. Any reference in this chapter or chapter
166 eighteen-c of this code to "Senior Administrator" means Vice
167 Chancellor for Administration;

168 (28) "Vice Chancellor for Human Resources" means the
169 person employed by the commission and the council jointly
170 pursuant to section two-a, article four of this chapter. The
171 person employed as senior director of human resources by
172 the commission on January 1, 2011, becomes the Vice
173 Chancellor for Human Resources on the effective date of this
174 section; and

175 (29) "West Virginia Consortium for Undergraduate
176 Research and Engineering" or "West Virginia CURE" means
177 the collaborative planning group established by article one-c
178 of this chapter.

§18B-1-6. Rulemaking.

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

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

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

14 (1) "Rule" means any regulation, guideline, directive,
15 standard, statement of policy or interpretation of general
16 application which has institution-wide effect or which
17 affects the rights, privileges or interests of employees,
18 students or citizens. Any regulation, guideline, directive,
19 standard, statement of policy or interpretation of general
20 application that meets this definition is a rule for the
21 purposes of this section.

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

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

38 (A) A procedure to ensure that public notice is given and
39 that the right of interested parties to have a fair and ade-
40 quate opportunity to respond is protected, including provid-
41 ing for a thirty-day public comment period prior to final
42 adoption of a rule;

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

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

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

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

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

60 (iii) If a governing board receives comments or suggestions
61 on a rule from the commission, it shall record these as part
62 of the minute record. The rule is not effective and may not be
63 implemented until the governing board holds a meeting and
64 places on the meeting agenda the comments it has received
65 from the commission.

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

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

75 (f) The governing boards shall promulgate and adopt any
76 rule which they are required to adopt by this chapter or
77 chapter eighteen-c of this code no later than July 1, 2011
78 unless a later date is specified. On and after this date:

79 (1) Any rule of a governing board which meets the defini-
80 tion set out in subsection (c) of this section and which has
81 not been promulgated and adopted by formal vote of the
82 appropriate governing board is void and may not be en-
83 forced;

84 (2) Any authority granted by this code which inherently
85 requires the governing board to promulgate and adopt a rule
86 is void until the governing board complies with this section.

87 (g) Within thirty days of the adoption of a rule, including
88 repeal or amendment of an existing rule, and before the
89 change is implemented, a governing board shall furnish a
90 copy of each rule which it has adopted to the commission or
91 the council, respectively, for review and approval, except the
92 governing boards of Marshall University and West Virginia
93 University are subject to subsection (c) of this section.

94 (h) Annually, by October 1, each governing board shall file
95 with the commission or the council, as appropriate, a list of
96 all rules that were in effect for that institution on July 1 of
97 that year, including the most recent date on which each rule
98 was considered and adopted, amended or repealed by the
99 governing board. For all rules adopted, amended or repealed
100 after the effective date of this section, the list shall include
101 a statement by the chair of the governing board certifying
102 that the governing board has complied with this section
103 when each listed rule was promulgated and adopted.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

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

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the
3 goals, objectives and priorities found in section one-a, article
4 one and article one-d of this chapter. The commission shall
5 exercise its authority and carry out its responsibilities in a
6 manner that is consistent and not in conflict with the powers
7 and duties assigned by law to the West Virginia Council for

8 Community and Technical College Education and the powers
9 and duties assigned to the governing boards. To that end, the
10 commission has the following powers and duties relating to
11 the governing boards under its jurisdiction:

12 (1) Develop, oversee and advance the public policy agenda
13 pursuant to article one-d of this chapter to address major
14 challenges facing the state, including, but not limited to, the
15 following:

16 (A) The goals, objectives and priorities established in this
17 chapter including specifically those goals, objectives and
18 priorities pertaining to the compacts created pursuant to
19 section seven, article one-d of this chapter; and

20 (B) Development and implementation of the master plan
21 described in section five, article one-d of this chapter for the
22 purpose of accomplishing the mandates of this section;

23 (2) Develop, oversee and advance the promulgation and
24 implementation of a financing rule for state institutions of
25 higher education under its jurisdiction. The rule shall meet
26 the following criteria:

27 (A) Provide for an adequate level of educational and
28 general funding for institutions pursuant to section five,
29 article one-a of this chapter;

30 (B) Serve to maintain institutional assets, including, but
31 not limited to, human and physical resources and eliminating
32 deferred maintenance; and

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

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

39 (A) Developing, building public consensus around and
40 sustaining attention to a long-range public policy agenda. In
41 developing the agenda, the commission and council shall
42 seek input from the Legislature and the Governor and
43 specifically from the state Board of Education and local
44 school districts in order to create the necessary linkages to
45 assure smooth, effective and seamless movement of students
46 through the public education and post-secondary education
47 systems and to ensure that the needs of public school courses
48 and programs can be fulfilled by the graduates produced and
49 the programs offered;

50 (B) Ensuring that the governing boards carry out their duty
51 effectively to govern the individual institutions of higher
52 education; and

53 (C) Holding the governing boards and the higher education
54 systems as a whole accountable for accomplishing their
55 missions and implementing their compacts;

56 (4) Develop and adopt each compact for the governing
57 boards under its jurisdiction;

58 (5) Review and adopt the annual updates of the institu-
59 tional compacts;

60 (6) Serve as the accountability point to state policymakers:

61 (A) The Governor for implementation of the public policy
62 agenda; and

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

66 (7) Jointly with the council, promulgate legislative rules
67 pursuant to article three-a, chapter twenty-nine-a of this
68 code to fulfill the purposes of section five, article one-a of
69 this chapter;

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

73 (9) Establish and implement the benchmarks and perfor-
74 mance indicators necessary to measure institutional progress
75 in achieving state policy priorities and institutional missions
76 pursuant to section seven, article one-d of this chapter;

77 (10) Report to the Legislature and to the Legislative
78 Oversight Commission on Education Accountability annually
79 during the January interim meeting period on a date and at
80 a time and location to be determined by the President of the
81 Senate and the Speaker of the House of Delegates. The report
82 shall address at least the following:

83 (A) The performance of its system of higher education
84 during the previous fiscal year, including, but not limited to,
85 progress in meeting the goals, objectives and priorities set
86 forth in section one-a, article one and article one-d of this
87 chapter and in the commission's master plan and institu-
88 tional compacts;

89 (B) The commission's priorities for new operating and
90 capital investments and the justification for the priority;

91 (C) Recommendations of the commission for statutory
92 changes necessary or expedient to achieve state goals,
93 objectives and priorities;

94 (11) Establish a formal process for identifying capital
95 investment needs and for determining priorities for these
96 investments for consideration by the Governor and the
97 Legislature as part of the appropriation request process
98 pursuant to article nineteen of this chapter.

99 (12) Develop standards and evaluate governing board
100 requests for capital project financing in accordance with
101 article nineteen of this chapter;

102 (13) Ensure that governing boards manage capital projects
103 and facilities needs effectively, including review and ap-
104 proval or disapproval of capital projects, in accordance with
105 article nineteen of this chapter.

106 (14) Acquire legal services as considered necessary,
107 including representation of the commission, its, governing
108 boards, employees and officers before any court or adminis-
109 trative body, notwithstanding any other provision of this
110 code to the contrary. The counsel may be employed either on
111 a salaried basis or on a reasonable fee basis. In addition, the
112 commission may, but is not required to, call upon the
113 Attorney General for legal assistance and representation as
114 provided by law;

115 (15) Employ a Chancellor for Higher Education pursuant
116 to section five of this article;

117 (16) Employ other staff as necessary and appropriate to
118 carry out the duties and responsibilities of the commission
119 and the council, in accordance with article four of this
120 chapter;

121 (17) Provide suitable offices in Kanawha County for the
122 chancellor, vice chancellors and other staff;

123 (18) Advise and consent in the appointment of the presi-
124 dents of the institutions of higher education under its
125 jurisdiction pursuant to section six of this article. The role of
126 the commission in approving an institutional president is to
127 assure through personal interview that the person selected
128 understands and is committed to achieving the goals,
129 objectives and priorities set forth in the compact, in section
130 one-a, article one and article one-d of this chapter;

131 (19) Approve the total compensation package from all
132 sources for presidents of institutions under its jurisdiction,
133 as proposed by the governing boards. The governing boards
134 must obtain approval from the commission of the total
135 compensation package both when institutional presidents

136 are employed initially and afterward when any change is
137 made in the amount of the total compensation package;

138 (20) Establish and implement the policy of the state to
139 assure that parents and students have sufficient information
140 at the earliest possible age on which to base academic
141 decisions about what is required for students to be successful
142 in college, other post-secondary education and careers
143 related, as far as possible, to results from current assessment
144 tools in use in West Virginia;

145 (21) Approve and implement a uniform standard jointly
146 with the council to determine which students shall be placed
147 in remedial or developmental courses. The standard shall be
148 aligned with college admission tests and assessment tools
149 used in West Virginia and shall be applied uniformly by the
150 governing boards throughout the public higher education
151 system. The chancellors shall develop a clear, concise
152 explanation of the standard which they shall communicate
153 to the state Board of Education and the state superintendent
154 of Schools;

155 (22) Jointly with the council, develop and implement an
156 oversight plan to manage systemwide technology including,
157 but not limited to, the following:

158 (A) Expanding distance learning and technology networks
159 to enhance teaching and learning, promote access to quality
160 educational offerings with minimum duplication of effort;
161 and

162 (B) Increasing the delivery of instruction to nontraditional
163 students, to provide services to business and industry and
164 increase the management capabilities of the higher education
165 system.

166 (C) Notwithstanding any other provision of law or this
167 code to the contrary, the council, commission and governing
168 boards are not subject to the jurisdiction of the Chief
169 Technology Officer for any purpose;

170 (23) Establish and implement policies and procedures to
171 ensure that a student may transfer and apply toward the
172 requirements for a bachelor's degree the maximum number
173 of credits earned at any regionally accredited in-state or out-
174 of-state community and technical college with as few
175 requirements to repeat courses or to incur additional costs as
176 are consistent with sound academic policy;

177 (24) Establish and implement policies and procedures to
178 ensure that a student may transfer and apply toward the
179 requirements for a degree the maximum number of credits
180 earned at any regionally accredited in-state or out-of-state
181 higher education institution with as few requirements to
182 repeat courses or to incur additional costs as are consistent
183 with sound academic policy;

184 (25) Establish and implement policies and procedures to
185 ensure that a student may transfer and apply toward the
186 requirements for a master's degree the maximum number of
187 credits earned at any regionally accredited in-state or out-
188 of-state higher education institution with as few require-
189 ments to repeat courses or to incur additional costs as are
190 consistent with sound academic policy;

191 (26) Establish and implement policies and programs, in
192 cooperation with the council and the governing boards,
193 through which a student who has gained knowledge and
194 skills through employment, participation in education and
195 training at vocational schools or other education institutions,
196 or Internet-based education programs, may demonstrate by
197 competency-based assessment that he or she has the neces-
198 sary knowledge and skills to be granted academic credit or
199 advanced placement standing toward the requirements of an
200 associate's degree or a bachelor's degree at a state institution
201 of higher education;

202 (27) Seek out and attend regional, national and interna-
203 tional meetings and forums on education and workforce
204 development-related topics as, in the commission's discre-
205 tion, are critical for the performance of their duties as
206 members, for the purpose of keeping abreast of education

207 trends and policies to aid it in developing the policies for this
208 state to meet the established education goals, objectives and
209 priorities pursuant to section one-a, article one and article
210 one-d of this chapter;

211 (28) Promulgate and implement a rule for higher education
212 governing boards and institutions to follow when consider-
213 ing capital projects pursuant to article nineteen of this
214 chapter;

215 (29) Consider and submit to the appropriate agencies of the
216 executive and legislative branches of state government an
217 appropriation request that reflects recommended appropria-
218 tions for the commission and the governing boards under its
219 jurisdiction. The commission shall submit as part of its
220 appropriation request the separate recommended appropria-
221 tion request it received from the council, both for the council
222 and for the governing boards under the council's jurisdiction.
223 The commission annually shall submit the proposed alloca-
224 tions based on each institution's progress toward meeting the
225 goals of its compact;

226 (30) The commission may assess institutions under its
227 jurisdiction, including Marshall University and West
228 Virginia University, for the payment of expenses of the
229 commission or for the funding of statewide higher education
230 services, obligations or initiatives related to the goals set
231 forth for the provision of public higher education in the
232 state;

233 (31) Promulgate rules allocating reimbursement of appro-
234 priations, if made available by the Legislature, to governing
235 boards for qualifying noncapital expenditures incurred in
236 providing services to students with physical, learning or
237 severe sensory disabilities;

238 (32) Make appointments to boards and commissions where
239 this code requires appointments from the State College
240 System Board of Directors or the University of West Virginia
241 System Board of Trustees which were abolished effective
242 June 30, 2000, except in those cases where the required

243 appointment has a specific and direct connection to the
244 provision of community and technical college education, the
245 appointment shall be made by the council. Notwithstanding
246 any provisions of this code to the contrary, the commission
247 or the council may appoint one of its own members or any
248 other citizen of the state as its designee. The commission and
249 council shall appoint the total number of persons in the
250 aggregate required to be appointed by these previous
251 governing boards;

252 (33) Pursuant to article three-a, chapter twenty-nine-a of
253 this code and section six, article one of this chapter, promul-
254 gate rules necessary or expedient to fulfill the purposes of
255 this chapter. The commission and the council shall promul-
256 gate a uniform joint legislative rule for the purposes of
257 standardizing, as much as possible, the administration of
258 personnel matters among the state institutions of higher
259 education and implementing the provisions of articles seven,
260 eight, nine and nine-a of this chapter;

261 (34) Determine when a joint rule among the governing
262 boards under its jurisdiction is necessary or required by law
263 and, in those instances, in consultation with the governing
264 boards under its jurisdiction, promulgate the joint rule;

265 (35) Promulgate and implement a rule jointly with the
266 council whereby course credit earned at a community and
267 technical college transfers for program credit at any other
268 state institution of higher education and is not limited to
269 fulfilling a general education requirement;

270 (36) By October 1, 2011, promulgate a rule pursuant to
271 section one, article ten of this chapter, establishing tuition
272 and fee policy for all governing boards under the jurisdiction
273 of the commission, including Marshall University and West
274 Virginia University. The rule shall include, but is not limited
275 to, the following:

276 (A) Comparisons with peer institutions;

- 277 (B) Differences among institutional missions;
- 278 (C) Strategies for promoting student access;
- 279 (D) Consideration of charges to out-of-state students; and
- 280 (E) Such other policies as the commission and council
281 consider appropriate;
- 282 (37) Implement general disease awareness initiatives to
283 educate parents and students, particularly dormitory
284 residents, about meningococcal meningitis; the potentially
285 life-threatening dangers of contracting the infection;
286 behaviors and activities that can increase risks; measures
287 that can be taken to prevent contact or infection; and
288 potential benefits of vaccination. The commission shall
289 encourage governing boards that provide medical care to
290 students to provide access to the vaccine for those who wish
291 to receive it; and
- 292 (38) Notwithstanding any other provision of this code to
293 the contrary sell, lease, convey or otherwise dispose of all or
294 part of any real property that it owns, in accordance with
295 article nineteen of this chapter.
- 296 (b) In addition to the powers and duties listed in subsection
297 (a) of this section, the commission has the following general
298 powers and duties related to its role in developing, articulat-
299 ing and overseeing the implementation of the public policy
300 agenda:
- 301 (1) Planning and policy leadership, including a distinct and
302 visible role in setting the state's policy agenda and in serving
303 as an agent of change;
- 304 (2) Policy analysis and research focused on issues affecting
305 the system as a whole or a geographical region thereof;
- 306 (3) Development and implementation of institutional
307 mission definitions, including use of incentive funds to

308 influence institutional behavior in ways that are consistent
309 with public priorities;

310 (4) Academic program review and approval for governing
311 boards under its jurisdiction. The review and approval
312 includes use of institutional missions as a template to judge
313 the appropriateness of both new and existing programs and
314 the authority to implement needed changes.

315 (A) The commission's authority to review and approve
316 academic programs for either Marshall University or West
317 Virginia University is limited to programs that are proposed
318 to be offered at a new location not presently served by that
319 institution;

320 (B) The commission shall approve or disapprove proposed
321 academic degree programs in those instances where approval
322 is required as soon as practicable, but in any case not later
323 than six months from the date the governing board makes an
324 official request. The commission may not withhold approval
325 unreasonably.

326 (5) Distribution of funds appropriated to the commission,
327 including incentive and performance-based funds;

328 (6) Administration of state and federal student aid pro-
329 grams under the supervision of the vice chancellor for
330 administration, including promulgation of rules necessary to
331 administer those programs;

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

335 (8) Developing, establishing and implementing informa-
336 tion, assessment, accountability and personnel systems,
337 including maintaining statewide data systems that facilitate
338 long-term planning and accurate measurement of strategic
339 outcomes and performance indicators;

340 (9) Jointly with the council, promulgating and implement-
341 ing rules for licensing and oversight for both public and
342 private degree-granting and nondegree-granting institutions
343 that provide post-secondary education courses or programs
344 in the state. The council has authority and responsibility for
345 approval of all post-secondary courses or programs provid-
346 ing community and technical college education as defined in
347 section two, article one of this chapter.

348 (10) Developing, implementing and overseeing statewide
349 and regional projects and initiatives related to providing
350 post-secondary education at the baccalaureate level and
351 above such as those using funds from federal categorical
352 programs or those using incentive and performance-based
353 funds from any source;

354 (11) Quality assurance that intersects with all other duties
355 of the commission particularly in the areas of research, data
356 collection and analysis, personnel administration, planning,
357 policy analysis, program review and approval, budgeting and
358 information and accountability systems; and

359 (12) Developing budgets and allocating resources for
360 governing boards under its jurisdiction:

361 (A) For all governing boards under its jurisdiction, except
362 the governing boards of Marshall University and West
363 Virginia University, the commission shall review institu-
364 tional operating budgets, review and approve capital
365 budgets, and distribute incentive and performance-based
366 funds;

367 (B) For the governing boards of Marshall University and
368 West Virginia University, the commission shall distribute
369 incentive and performance-based funds and may review and
370 comment upon the institutional operating budgets and
371 capital budgets. The commission's comments, if any, shall be
372 made part of the governing board's minute record.

373 (c) In addition to the powers and duties provided in
374 subsections (a) and (b) of this section and any other powers

375 and duties assigned to it by law, the commission has other
376 powers and duties necessary or expedient to accomplish the
377 purposes of this article.

378 (d) The commission may withdraw specific powers of a
379 governing board under its jurisdiction for a period not to
380 exceed two years, if the commission determines that any of
381 the following conditions exist:

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

385 (2) The commission has received information, substantiated
386 by independent audit, of significant mismanagement or
387 failure to carry out the powers and duties of the governing
388 board according to state law; or

389 (3) Other circumstances which, in the view of the commis-
390 sion, severely limit the capacity of the governing board to
391 exercise its powers or carry out its duties and responsibili-
392 ties.

393 The commission may not withdraw specific powers for a
394 period exceeding two years. During the withdrawal period,
395 the commission shall take all steps necessary to reestablish
396 sound, stable and responsible institutional governance.

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

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

5 (b) The commission shall set the qualifications for the
6 position of Chancellor and, when a vacancy occurs, shall
7 conduct a thorough nationwide search for qualified candi-

8 dates. A qualified candidate is one who meets at least the
9 following criteria:

10 (1) Possesses an excellent academic and administrative
11 background;

12 (2) Demonstrates strong communication skills;

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

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

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

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

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

31 (e) The commission sets the chancellor's salary. The salary
32 may not exceed by more than twenty percent the average
33 annual salary of chief executive officers of state systems of
34 higher education in the states that comprise the membership
35 of the Southern Regional Education Board.

36 (f) The commission may employ a Vice Chancellor for
37 Health Sciences who serves at the will and pleasure of the
38 commission. The Vice Chancellor for Health Sciences shall

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

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

52 (h) The commission shall employ a Vice Chancellor for
53 Human Resources pursuant to section two-a, article four of
54 this chapter. The person serving as senior director of human
55 resources by the commission on January 1, 2011, is Vice
56 Chancellor for Human Resources on the effective date of this
57 section. Additionally, the commission shall employ a quali-
58 fied generalist in the field of human resources pursuant to
59 section two-a, article four of this chapter. The human
60 resources generalist shall report to the Vice Chancellor for
61 Human Resources.

62 (i) The commission may employ a Vice Chancellor for State
63 Colleges who serves at the will and pleasure of the commis-
64 sion. At a minimum, the Vice Chancellor for State Colleges
65 shall perform the following duties:

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

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

71 (3) Serve as an advocate and spokesperson for the state
72 colleges to represent them and to make their interests, views

73 and issues known to the chancellor, the commission and
74 governmental agencies;

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

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

80 (j) On behalf of the commission, the chancellor may enter
81 into agreements with any state agency or political subdivi-
82 sion of the state, any state institution of higher education or
83 any other person or entity to enlist staff assistance to
84 implement the powers and duties assigned by the commission
85 or by state law.

86 (k) The chancellor is responsible for the daily operations of
87 the commission and has the following responsibilities
88 relating to the commission and the governing boards under
89 its jurisdiction:

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

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

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

99 (4) To assist the governing boards in developing rules,
100 subject to the provisions of section six, article one of this
101 chapter. Nothing in this chapter requires the rules of the
102 governing boards to be filed pursuant to the rule-making
103 procedures provided in article three-a, chapter twenty-nine-
104 a of this code. The commission and the council, either

105 separately or jointly as appropriate, are responsible for
106 ensuring that any policy which is required to be uniform
107 across the institutions is applied in a uniform manner;

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

110 (l) The chancellor shall be reimbursed for all actual and
111 necessary expenses incurred in the performance of all
112 assigned duties and responsibilities.

113 (m) The chancellor, with the commission, advises the
114 Legislature on matters of higher education in West Virginia.
115 The chancellor shall work closely with the Legislative
116 Oversight Commission on Education Accountability and
117 with the elected leadership of the state to ensure that they
118 are fully informed about higher education issues and that the
119 commission fully understands the goals, objectives and
120 priorities for higher education that the Legislature has
121 established by law.

122 (n) The chancellor may design and develop for consider-
123 ation by the commission new statewide or region-wide
124 initiatives in accordance with the goals set forth in section
125 one-a, article one and article one-d of this chapter, and the
126 public policy agenda articulated by the commission. In those
127 instances where the initiatives to be proposed have a direct
128 and specific impact or connection to community and techni-
129 cal college education as well as to baccalaureate and gradu-
130 ate education, the Chancellor for Higher Education and the
131 Chancellor for Community and Technical College Education
132 shall design and develop the initiatives jointly for consider-
133 ation by the commission and the council.

134 (o) To further the goals of cooperation and coordination
135 between the commission and the state Board of Education,
136 the chancellor serves as an ex officio, nonvoting member of
137 the state board. The chancellor shall work closely with
138 members of the state Board of Education and with the State
139 Superintendent of Schools to assure that the following goals
140 are met:

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

143 (2) Appropriate coordination of missions and programs.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

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

1 (a) The governing boards are subject to the supervision of
2 the commission or the council, as appropriate, except in
3 those instances where specific statutory exceptions are
4 granted by law to the governing boards of Marshall Univer-
5 sity and West Virginia University.

6 (b) The governing boards of all state institutions of higher
7 education are subject to the provisions of law that relate to
8 the administration of personnel matters including, specifi-
9 cally, articles seven, eight, nine and nine-a of this chapter
10 and to rules promulgated and adopted in accordance with
11 these provisions.

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

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

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

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

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

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

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

13 (2) Each master plan shall include, but is not limited to, the
14 following:

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

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

25 (C) Documentation showing how the governing board
26 involved the commission or council, as appropriate, constitu-
27 ency groups, clientele of the institution and the general
28 public in the development of all segments of the master plan.

29 (3) The plan shall be established for periods of not fewer
30 than three nor more than five years and shall be revised
31 periodically as necessary, including adding or deleting
32 bachelor's, master's and doctoral degree programs for all

33 governing boards as approved by the commission or council,
34 respectively, except for the governing boards of Marshall
35 University and West Virginia University only, the commis-
36 sion may review, but may not approve or disapprove,
37 additions or deletions of degree programs.

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

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

46 (e) Direct the preparation of an appropriation request for
47 the institution under its jurisdiction, which relates directly
48 to missions, goals and projections found in the master plan
49 and the compact;

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

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

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

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

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

86 (j) Involve faculty, students and classified employees in
87 institution-level planning and decisionmaking when those
88 groups are affected;

89 (k) Subject to federal law and pursuant to articles seven,
90 eight, nine and nine-a of this chapter and to rules adopted by
91 the commission and the council, administer a system for the
92 management of personnel matters, including, but not limited
93 to, discipline for employees at the institution under its
94 jurisdiction;

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

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

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

106 (o) Conduct written performance evaluations of the
107 president pursuant to section six, article one-b of this
108 chapter;

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

112 (q) Submit to the commission or council, as appropriate,
113 any data or reports requested by the commission or council
114 within the time frame set by the commission or council;

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

123 (s) Provide and transfer funds and property to certain
124 corporations pursuant to section ten, article twelve of this
125 chapter;

126 (t) Delegate, with prescribed standards and limitations, the
127 part of its power and control over the business affairs of the
128 institution to the president in any case where it considers the
129 delegation necessary and prudent in order to enable the
130 institution to function in a proper and expeditious manner
131 and to meet the requirements of its master plan and compact.
132 If a governing board elects to delegate any of its power and
133 control under this subsection, it shall enter the delegation in
134 the minutes of the meeting when the decision was made and
135 shall notify the commission or council, as appropriate. Any
136 delegation of power and control may be rescinded by the

137 appropriate governing board, the commission or council, as
138 appropriate, at any time, in whole or in part, except that the
139 commission may not revoke delegations of authority made by
140 the governing board of Marshall University or West Virginia
141 University;

142 (u) Unless changed by the commission or the council, as
143 appropriate, continue to abide by existing rules setting forth
144 standards for accepting advanced placement credit for the
145 institution under its jurisdiction. Individual departments at
146 a state institution of higher education, with approval of the
147 faculty senate, may require higher scores on the advanced
148 placement test than scores designated by the governing
149 board when the credit is to be used toward meeting a
150 requirement of the core curriculum for a major in that
151 department;

152 (v) Consult, cooperate and coordinate with the State
153 Treasurer and the State Auditor to update as necessary and
154 maintain an efficient and cost-effective system for the
155 financial management and expenditure of appropriated and
156 nonappropriated revenue at the institution under its jurisdic-
157 tion. The system shall ensure that properly submitted
158 requests for payment are paid on or before the due date but,
159 in any event, within fifteen days of receipt in the State
160 Auditor's office;

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

172 (1) Not later than July 1, 2012, the Department of Adminis-
173 tration shall make available to each governing board the

174 option of using a standardized electronic system for these
175 personnel transactions.

176 (2) The Secretary of the Department of Administration may
177 suspend a governing board's participation in the standard-
178 ized electronic system if he or she certifies to the Governor
179 that the governing board has failed repeatedly and substan-
180 tially to comply with the department's policies for adminis-
181 tering the electronic system;

182 (x) Notwithstanding any other provision of this code to the
183 contrary, transfer funds from any account specifically
184 appropriated for its use to any corresponding line item in a
185 general revenue account at any agency or institution under
186 its jurisdiction as long as the transferred funds are used for
187 the purposes appropriated;

188 (y) Transfer funds from appropriated special revenue
189 accounts for capital improvements under its jurisdiction to
190 special revenue accounts at agencies or institutions under its
191 jurisdiction as long as the transferred funds are used for the
192 purposes appropriated in accordance with article nineteen of
193 this chapter;

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

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

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

1 (a) The governing board of a state institution of higher
2 education is granted the additional powers and assigned the
3 associated duties pursuant to this section previously granted
4 and assigned to the governing boards of Marshall University
5 and West Virginia University, if the commission or council,
6 as appropriate, approves granting the powers and assigning
7 the duties to that governing board.

8 (b) The powers and duties that may be granted and as-
9 signed pursuant to this section are the following:

10 (1) Sections five, six and seven, article three, chapter
11 twelve of this code;

12 (2) Section two, article three of this chapter;

13 (3) Sections five, six and seven, article four of this chapter;

14 (4) Section seven, article five of this chapter; and

15 (5) Section six-a, article ten of this chapter.

16 (c) *Additional powers and duties related to purchasing* —
17 The powers and duties granted and assigned to the governing
18 boards of Marshall University and West Virginia University
19 by section four, article five of this chapter are extended to
20 the governing boards of all other state institutions of higher
21 education under the following conditions:

22 (1) The commission and council shall conduct a study to
23 determine the capacity of each governing board under their
24 respective jurisdictions to implement the additional powers
25 and carry out the additional assigned duties related to
26 purchasing;

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

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

36 (d) The commission and council have the power and the
37 duty to monitor participation and provide technical assis-
38 tance, as requested or required, to governing boards under
39 their respective jurisdictions and to limit or rescind exercise
40 of the powers, in whole or in part, granted by this section to
41 a governing board if, in the sole determination of the
42 commission or council, as appropriate, that action is war-
43 ranted.

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

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

1 (a) There is continued the West Virginia Council for
2 Community and Technical College Education. The council
3 has all the powers and duties assigned by law to the joint
4 commission for vocational – technical-occupational educa-
5 tion prior to July 1, 2001, and all other powers and duties
6 assigned by law.

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

16 (c) The council shall conduct written performance evalua-
17 tions of the chancellor annually and may offer the chancellor

18 a contract not to exceed three years. At the end of each
19 contract period, the council shall review the evaluations and
20 make a determination by vote of its members on continuing
21 employment and level of compensation.

22 (d) When a vacancy occurs in the position of chancellor,
23 the council shall enter into an initial employment contract
24 for one year with the candidate selected to fill the vacancy.
25 At the end of the initial period, and each contract period
26 thereafter, the council shall review the evaluations and make
27 a determination by vote of its members on continuing
28 employment and compensation level for the chancellor.

29 (e) The individual who was serving as Vice Chancellor for
30 Community and Technical College Education and Workforce
31 Development and who became chancellor effective March 13,
32 2004, maintains all benefits of employment held, accrued and
33 afforded as the Vice Chancellor for Community and Techni-
34 cal College Education and Workforce Development prior to
35 March 13, 2004. These benefits include, but are not limited
36 to, retirement benefits, continued membership in the same
37 retirement system, insurance coverage and sick and annual
38 leave. For the purposes of leave conversion established in
39 section thirteen, article sixteen, chapter five of this code, the
40 chancellor is not a new employee and the prohibition on
41 conversion does not apply if the chancellor was eligible for
42 leave conversion while serving as vice chancellor.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING BOARDS.

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

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

8 must be an integral part of any plan to strengthen and
9 expand the economy.

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

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

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

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

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

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

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

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

44 (e) The governing boards of Marshall University and West
45 Virginia University each have the power and the obligation
46 to perform functions, tasks and duties as prescribed by law
47 and to exercise their authority and carry out their responsi-
48 bilities in a manner that is consistent with and not in conflict
49 with the powers and duties assigned by law to the council
50 and the commission.

51 (f) While the governing boards may choose to delegate
52 powers and duties to their respective presidents pursuant to
53 subsection (s), section four, article two-a of this chapter,
54 ultimately, it is they who are accountable to the Legislature,
55 the Governor and the citizens of West Virginia for meeting
56 the established state goals, objectives and priorities set forth
57 in this article, and in section one-a, article one and article
58 one-d of this chapter. Therefore, grants of operational
59 flexibility and autonomy are made directly to the governing
60 boards and are not grants of operational flexibility and
61 autonomy to the president of an institution.

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

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

3 (1) The commission functions as a state-level coordinating
4 board exercising its powers and duties in relation to the
5 governing boards as prescribed by law;

6 (2) The primary responsibility of the commission is to work
7 collaboratively with the governing boards to research,
8 develop and propose policy that will achieve the established
9 goals, objectives, and priorities set forth in this chapter and
10 chapter eighteen-c of this code; and

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

13 (A) Advocating for public higher education at the state
14 level;

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

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

24 (b) *Relationship between the council and the governing*
25 *boards.* — (1) The council maintains all powers and duties
26 assigned to it by law or rule relating to community and
27 technical colleges as defined in section two, article one of
28 this chapter;

29 (2) The council functions as a coordinating board for the
30 institutions under its jurisdiction which make up the
31 statewide network of independently-accredited community
32 and technical colleges. In addition to recognizing the
33 authority assigned by law to the council and abiding by rules
34 duly promulgated by the council relating to the community
35 and technical colleges, the governing boards shall exercise
36 their authority and carry out their responsibilities in a
37 manner that is consistent with and complementary to the
38 powers and duties assigned by law or rule to the community
39 and technical colleges or to the council;

40 (c) The governing boards shall work collaboratively with
41 the commission, the council and their staff to provide all
42 information requested by the commission or the council in an
43 appropriate format and in a timely manner.

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

1 The expertise of faculty and graduate students at state
2 institutions of higher education is important to every citizen
3 of this state. It is the responsibility of the governing boards
4 to channel this expertise into research and analysis that will
5 yield measurable benefits to the citizens of West Virginia.
6 Therefore, in addition to the goals, objectives and priorities
7 established in section one-a, article one and article one-d of
8 this chapter and goals established elsewhere in this code, it
9 is the responsibility of the governing boards to concentrate
10 attention and resources on certain specific state priorities
11 that have a direct, positive impact on the economic, social
12 and cultural well-being of the people of West Virginia.

13 (a) Priorities for Marshall University and West Virginia
14 University in collaboration:

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

17 (2) Performing professional development-related research
18 and coordinating the delivery of professional development to
19 educators in the public schools of the state pursuant to
20 article two, chapter eighteen of this code; and

21 (3) Building subject matter expertise in public education
22 finance, including mastery of the theories and concepts used
23 in developing formulas to provide state-level financial
24 support to public education.

25 (b) The Legislature may, but is not required to, make
26 additional appropriations for the benefit of Marshall Univer-
27 sity and West Virginia University to assist them in fulfilling
28 the purposes set forth in subsection (a) of this section.

29 (c) Additional priorities for governing boards:

30 (d) In addition to the priorities established in subsection (a)
31 of this section, each governing board under the jurisdiction

32 of the commission shall focus resources and attention on
33 improving its graduation rate for full-time undergraduate
34 students as a specific institutional priority. The graduation
35 rate is measured as a percentage of the number of under-
36 graduate students who obtain a degree within six years of
37 the date of enrollment as full-time freshmen.

38 (1) By July 1, 2015, the governing board of each state
39 institution of higher education under the jurisdiction of the
40 commission, including the governing boards of Marshall
41 University and West Virginia University, shall attain a
42 graduation rate for full-time undergraduate students that
43 equals or exceeds the graduation rate of its peers established
44 pursuant to section three, article one-a of this chapter.

45 (2) The commission shall monitor and report annually by
46 December 1, to the Legislative Oversight Commission on
47 Education Accountability on the progress of the governing
48 boards toward meeting the goals set forth in this subsection.

ARTICLE 4. GENERAL ADMINISTRATION.

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

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

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

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

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

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

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

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

36 (c) Suitable offices for the Vice Chancellor of Administra-
37 tion, the Vice Chancellor for Human Resources and other
38 staff shall be provided in Kanawha County.

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

1 (a) By and with the advice and consent of the council for
2 community and technical college education, the commission
3 shall employ a Vice Chancellor for Human Resources who
4 may not be dismissed without the consent of the council. The
5 person employed as senior director of human resources by
6 the commission on January 1, 2011, becomes the Vice
7 Chancellor for Human Resources on the effective date of this

8 section. Thereafter, any vacancy occurring in this position
9 shall be filled in accordance with this section.

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

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

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

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

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

40 (e) The Vice Chancellor provides support to the chancellors
41 and organizations on a highly diverse range of issues includ-

42 ing assisting them to develop a culture of constant improve-
43 ment in a rapidly changing, complex market. Duties of the
44 position include, but are not limited to, the following:

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

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

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

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

60 (5) Maintaining the classification system by providing for
61 regular review of jobs to determine whether the current job
62 description accurately reflects the duties and responsibilities
63 and whether the job is properly classified or needs to be
64 modified or deleted. Every job shall be reviewed at least once
65 within each five-year period;

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

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

72 (A) Analyzing and determining training needs of organiza-
73 tion employees and formulating and developing plans,
74 procedures and programs to meet specific training needs and

75 problems. Successful completion of these tasks requires the
76 vice chancellor to work closely with and communicate
77 regularly with the training and development coordinators
78 employed by each organization;

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

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

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

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

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

99 (f) To assist in performing the duties of vice chancellor, the
100 commission, with the consent of the council, shall employ a
101 generalist/manager who is well qualified in the field of
102 human resources. The position reports to the Vice Chancellor
103 for Human resources and shall be filled on a permanent basis
104 by September 1, 2011. The successful candidate is responsi-
105 ble for a wide range of human resources management,
106 reporting and development activities and works collabor-
107 atively with governing boards and their employees at all
108 levels.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**§18B-5-9. Higher education fiscal responsibility.**

1 (a) The governing boards shall ensure the fiscal integrity of
2 their operations using best business and management
3 practices.

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

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

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

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

14 (D) Preparing annual audited financial statements as
15 coordinated and directed by the commission and council,
16 respectively, and as the commission requires to complete the
17 higher education fund audit;

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

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

23 (2) Each governing board and any affiliated research
24 corporation shall comply with the OMB Circular A-133
25 annual grant award audit requirements and are exempt from
26 section fourteen, article four, chapter twelve of this code.

27 (3) Within thirty days of the completion of the financial
28 audit report, the governing boards shall furnish to the

29 commission or council, respectively, copies of the annual
30 audited financial statements.

31 (b) The commission and council, each, shall ensure the
32 fiscal integrity of any electronic process conducted at its
33 offices and by the governing boards under its respective
34 jurisdiction by applying best business and management
35 practices.

36 (c) To the maximum extent practicable, each higher
37 education organization shall provide for its employees to
38 receive their wages via electronic transfer or direct deposit.

39 (d) Notwithstanding any other provision of this code to the
40 contrary, a purchasing card may be used by the council, the
41 commission or a governing board of a state institution of
42 higher education to make any payment authorized by the
43 Auditor, including regular routine payments and travel and
44 emergency payments. Payments are set at an amount to be
45 determined by the Auditor.

46 (1) Subject to approval of the Auditor, an emergency
47 payment and a routine, regularly scheduled payment,
48 including, but not limited to, utility payments, contracts and
49 real property rental fees, may exceed this limit by an amount
50 to be determined by the Auditor.

51 (2) The council, commission and a governing board of a
52 state institution of higher education may use a purchasing
53 card for travel expenses directly related to the job duties of
54 the traveling employee. Where approved by the Auditor, the
55 expenses may exceed \$5000 by an amount to be determined
56 by the Auditor. Traveling expenses may include registration
57 fees and airline and other transportation reservations, if
58 approved by the president of the institution. Traveling
59 expenses may include purchases of fuel and food.

60 (3) The commission, council, and governing boards each
61 shall maintain one purchasing card for use only in a situa-
62 tion declared an emergency by the appropriate chancellor or

63 the institution's president. Emergencies may include, but are
64 not limited to, partial or total destruction of a facility; loss of
65 a critical component of utility infrastructure; heating,
66 ventilation or air condition failure in an essential academic
67 building; loss of campus road, parking lot or campus en-
68 trance; or a local, regional, or national emergency situation
69 that has a direct impact on the campus.

70 (e) Notwithstanding section ten-f, article three, chapter
71 twelve of this code, or any other provision of this code or law
72 to the contrary, the Auditor shall accept any receiving report
73 submitted in a format utilizing electronic media. The Auditor
74 shall conduct any audit or investigation of the council,
75 commission or governing board at its own expense and at no
76 cost to the council, commission or governing board.

77 (f) The council and the commission each shall maintain a
78 rule in accordance with article three-a, chapter twenty-nine-
79 a of this code. The rule shall provide for governing boards
80 individually or cooperatively to maximize their use of any of
81 the following purchasing practices that are determined to
82 provide a financial advantage:

83 (1) Bulk purchasing;

84 (2) Reverse bidding;

85 (3) Electronic marketplaces; and

86 (4) Electronic remitting.

87 (g) Each governing board may establish a consortium with
88 at least one other governing board, in the most cost-efficient
89 manner feasible, to consolidate the following operations and
90 student services:

91 (1) Payroll operations;

92 (2) Human resources operations;

93 (3) Warehousing operations;

94 (4) Financial transactions;

95 (5) Student financial aid application, processing and
96 disbursement;

97 (6) Standard and bulk purchasing; and

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

100 (h) A governing board may charge a fee to the governing
101 board of each institution for which it provides a service or
102 performs an operation. The fee rate shall be in the best
103 interest of both the institution being served and the govern-
104 ing board providing the service.

105 (i) A governing board may provide the services authorized
106 by this section for the benefit of any governmental body or
107 public or private institution.

108 (j) Each governing board shall strive to minimize its
109 number of low-enrollment sections of introductory courses.
110 To the maximum extent practicable, governing boards shall
111 use distance learning to consolidate the course sections. The
112 council and commission shall report the progress of reduc-
113 tions as requested by the Legislative Oversight Commission
114 on Education Accountability.

115 (k) A governing board shall use its natural resources and
116 alternative fuel resources to the maximum extent feasible.
117 The governing board:

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

120 (2) May supply the resources to the general public at fair
121 market value;

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

124 (4) May develop research parks to further the purpose of
125 this section and to expand the economic development
126 opportunities in the state.

127 (l) Any cost-savings realized or fee procured or retained by
128 a governing board pursuant to this section is retained by the
129 governing board.

130 (m) Each governing board is authorized, but not required,
131 to implement subsections (f), (g) and (h) of this section.

132 If a governing board elects to implement subsection (g) of
133 this section, the following conditions apply:

134 (1) The governing board makes the determination regard-
135 ing any additional operation or service which is appropriate
136 for consolidation without input from the council or commis-
137 sion;

138 (2) The governing board sets the fee charged to the govern-
139 ing board of the institution for which it provides a service or
140 performs an operation. The fee rate shall be in the best
141 interest of both the institution being served and the govern-
142 ing board providing the service and is not subject to ap-
143 proval by the council or commission; and

144 (3) The governing board may not implement this subdivi-
145 sion in a manner which supercedes the requirements estab-
146 lished in section twelve, article three-c of this chapter.

147 (n) The governing boards of Marshall University and West
148 Virginia University, respectively, each shall promulgate a
149 rule on purchasing procedures in accordance with section
150 six, article one of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

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

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

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

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

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

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

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

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

21 (7) Adhering to federal and state laws;

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

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

25 (b) To accomplish these goals, the Legislature encourages
26 organizations to pursue a human resources strategy which
27 provides monetary and nonmonetary returns to employees in
28 exchange for their time, talents and efforts to meet articu-

29 lated goals, objectives and priorities of the state, the commis-
30 sion and council, and the organization. The system should
31 maximize the recruitment, motivation and retention of
32 highly qualified employees, ensure satisfaction and engage-
33 ment of employees with their jobs, ensure job performance
34 and achieve desired results.

§18B-7-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (1) For layoffs by classification for reason of lack of funds
21 or work, or abolition of position or material changes in
22 duties or organization and for recall of employees laid off,
23 consideration shall be given to an employee's seniority as

24 measured by permanent employment in the service of the
25 state system of higher education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) Any reference in this code to the “additional retirement
2 plan” relating to state higher education employees, means
3 the “higher education retirement plan” provided in this
4 section. Any state higher education employee participating
5 in a retirement plan upon the effective date of this section
6 continues to participate in that plan and may not elect to
7 participate in any other state retirement plan. Any retire-
8 ment plan continues to be governed by the provisions of law
9 applicable on the effective date of this section.
- 10 (b) The commission, on behalf of the council, governing
11 boards and itself, shall contract for a retirement plan for
12 their employees, to be known as the “Higher Education
13 Retirement Plan”. The commission, council and governing
14 boards shall make periodic deductions from the salary
15 payments due employees in the amount they are required to
16 contribute to the Higher Education Retirement Plan, which
17 deductions shall be six percent.
- 18 (c) The commission, council and governing boards may
19 contract for supplemental retirement plans for any or all of
20 their employees to supplement the benefits employees
21 otherwise receive. The commission, council and governing
22 boards may make additional periodic deductions from the
23 salary payments due the employees in the amount they are
24 required to contribute for the supplemental retirement plan.
- 25 (d) An organization, by way of additional compensation to
26 their employees, shall pay an amount, which, at a minimum,
27 equals the contributions of the employees into the higher
28 education retirement plan from funds appropriated to the
29 commission, council or governing board for personal ser-
30 vices.
- 31 (e) As part of an overall compensation plan, the commis-
32 sion, council or a governing board, each at its sole discretion,
33 may increase its contributions to any employee retirement
34 plan to an amount that exceeds the contributions of employ-
35 ees.

36 (f) Each participating employee has a full and immediate
 37 vested interest in the retirement and death benefits accrued
 38 from all the moneys paid into the Higher Education Retire-
 39 ment Plan or a supplemental retirement plan for his or her
 40 benefit. Upon proper requisition of a governing board, the
 41 commission or council, the Auditor periodically shall issue
 42 a warrant, payable as specified in the requisition, for the
 43 total contributions so withheld from the salaries of all
 44 participating employees and for the matching funds of the
 45 commission, council or governing board.

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

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

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

10 The rules shall encourage continuing education and staff
 11 development and shall require that employees be selected on

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

19 (b) Subject to legislative appropriation therefor, the
20 commission and council shall provide additional, regular,
21 training and professional development for employees
22 engaged in human resources-related activities at all organi-
23 zations. The training and professional development:

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

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

§18B-7-7. Employment practices.

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

11 (b) Each governing board, with the advice and assistance
12 of the staff councils and other groups representing classified
13 employees, shall promulgate and adopt a rule in accordance
14 with section six, article one of this chapter that discourages
15 temporary, nonemergency, institutionally-imposed changes

16 in an employee's work schedule; that maintains reasonable
17 continuity in working schedules and conditions for employ-
18 ees; and that requires institutions to consider feasible and
19 innovative ways to use the institution's classified employees
20 most efficiently. These innovations may include, but are not
21 limited to, flexibility in employee scheduling, job-sharing
22 and four-day work weeks.

§18B-7-8. Reporting.

1 (a) *Implementation reports.* —

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

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

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

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

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

24 (5) An assessment of progress made by the governing
25 boards toward achieving full funding of the temporary

26 classified employees' salary schedule pursuant to section
27 three, article nine of this chapter;

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

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

38 (b) *Annual personnel reports.* —

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

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

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

55 (2) The commission and council shall prepare a human
56 resources report card summarizing the performance of
57 organizations on key human resources measures. The report
58 card shall be presented to the Legislative Oversight Commis-

59 sion on Education Accountability no later than December 1,
60 2012, and annually thereafter, and shall be made available
61 to the general public. At a minimum, the human resources
62 report card shall contain the following data:

63 (A) Human resources department metrics by organization:

64 (i) Number of human resources staff;

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

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

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

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

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

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

75 (B) Human resources expense data:

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

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

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

82 (C) Compensation data:

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

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

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

89 (D) System metrics:

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

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

94 (E) An account of the total amount, type of training or
95 professional development provided, the number of employees
96 who participated and the overall cost of the training and
97 professional development provided to employees pursuant to
98 section six of this article; and

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

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

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

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

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

117 (d) It is the responsibility of the head of human resources
118 for each organization to prepare and submit to the president
119 or chief executive officer all human resources data requested
120 by the commission and council. The president or executive
121 officer of each organization shall submit the requested data
122 at times established by the commission and council.

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

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

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

§18B-7-9. Human resources reviews.

1 (a) The commission and council jointly shall conduct an
2 initial human resources review of each organization to be
3 carried out, subject to legislative appropriation, by an
4 external vendor possessing experience and expertise in
5 conducting these reviews. The initial review shall be com-
6 pleted by October 1, 2011, and shall be designed to compare
7 current human resources practices at each organization to
8 best practices, to identify areas of strength or deficiency, to
9 identify functions that should be the responsibility of the
10 human resources department, but are incorrectly assigned or
11 carried out by other offices within each organization, to
12 assist in targeting employee training and development, to
13 determine the degree to which organizations are adhering to

14 state and federal laws related to human resources adminis-
15 tration and to provide data necessary to guide policymakers
16 in developing personnel rules and implementing the classifi-
17 cation and compensation system.

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

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

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

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

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

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

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

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

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

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

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

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

37 (d) An employee who has accrued compensatory time as
38 authorized by this section, and who has requested the use of
39 compensatory time, shall be permitted by the employer to use
40 this time within a reasonable period after making the request
41 if the use of the compensatory time does not unduly disrupt
42 the operation of the employing agency. Compensatory time
43 must be used within one year from the time it is accrued.

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

1 (a) Notwithstanding any provision of this code to the
2 contrary, by July 1, 2015, the percentage of personnel placed

3 in the category of “nonclassified” at a higher education
4 organization may not exceed twenty percent of the total
5 number of classified and nonclassified employees of that
6 organization as those terms are defined in section two,
7 article nine-a of this chapter and who are eligible for
8 membership in a state retirement system of the State of West
9 Virginia or other retirement plan authorized by the state. A
10 higher education organization which has more than twenty
11 percent of its employees placed in the nonclassified category
12 as defined by this subsection on July 1, 2011, shall reduce the
13 number of nonclassified employees to no more than twenty-
14 five percent by July 1, 2013, and to no more than twenty
15 percent by July 1, 2015, except as set forth in subsections (b)
16 and (c) of this section.

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

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

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

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

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

38 (1) The governing board of an institution votes to approve
39 any percentage or fraction of a percentage number above
40 twenty percent and seeks and receives the approval of the
41 commission or council, as appropriate, before increasing the
42 total above twenty percent.

43 (2) In the case of personnel employed by the commission
44 and the council, the chancellors jointly shall agree to
45 increase the percentage number or fraction of a number of
46 nonclassified employees beyond twenty percent and shall
47 recommend this action to their respective boards for ap-
48 proval.

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

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

56 (3) *Powers and duties of Commission and Council regard-*
57 *ing nonclassified staff ratios. —*

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

63 (B) The commission and council shall provide technical
64 assistance to organizations under their respective jurisdic-
65 tions in collecting and interpreting data to ensure that they
66 fulfill the requirements established by this section. Consider-
67 ation of these issues shall be made part of each review
68 required by section nine of this article and information from
69 the review included in the reports required by subsections (a)
70 and (b), section eight of this article;

71 (C) The chancellors shall monitor the progress of the
72 organizations in meeting the deadlines established in this
73 section and shall report periodically to the council and
74 commission. The commission and council shall make a
75 preliminary compliance report to the Legislative Oversight
76 Commission on Education Accountability by September 1,
77 2013, and a final report on organization compliance to that
78 body by September 1, 2015.

79 (D) Subject to a joint recommendation by the commission
80 and the council and subsequent affirmative action by the
81 Legislature to extend the authority beyond the specified date
82 of termination, the authority of an organization to place
83 more than twenty percent of its personnel in the
84 nonclassified category pursuant to this section expires on
85 July 1, 2016.

86 (d) The current annual salary of a nonclassified employee
87 may not be reduced if his or her position is redefined as a
88 classified position solely to meet the requirements of this
89 section. If such a nonclassified employee is reclassified, his
90 or her salary does not constitute evidence of inequitable
91 compensation in comparison to other employees in the same
92 paygrade.

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

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

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

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

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

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

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

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

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

18 (c) For the purpose of this section, a catastrophic illness or
19 injury is one that is expected to incapacitate the employee
20 and create a financial hardship because the employee has
21 exhausted all sick and annual leave and other paid time off.
22 Catastrophic illness or injury also includes an incapacitated
23 immediate family member as defined by a governing board,

24 the commission or the council, as appropriate, if this results
25 in the employee being required to take time off from work
26 for an extended period of time to care for the family member
27 and if the employee has exhausted all sick and annual leave
28 and other paid time off.

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

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

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

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

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

51 (e) Sick or annual leave may be donated to an employee
52 experiencing a catastrophic illness or injury. The leave shall
53 be donated at the request of the employee after appropriate
54 verification that the employee is unable to work due to the
55 catastrophic illness or injury as determined by the president
56 of the institution or the appropriate chancellor. When
57 transfer of sick or annual leave is approved by the president

58 of the institution or the appropriate chancellor, any em-
59 ployee may donate sick or annual leave in one-day incre-
60 ments by providing written notice to the personnel office.
61 Donations shall be reflected as a day-for-day deduction from
62 the sick or annual leave balance of the donating employee.
63 An employee receiving the donated sick or annual leave shall
64 have any time which is donated credited to his or her
65 account in one-day increments and reflected as a day-for-
66 day addition to the leave balance of the receiving employee.

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

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

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

79 (g) Donated sick or annual leave deposited in an institu-
80 tional leave bank or transferred under subsection (d) of this
81 section may be inter-institutional in accordance with the
82 policies of the appropriate governing board. Each institution,
83 the commission or the council is responsible for the adminis-
84 tration of the sick or annual leave deposits, withdrawals and
85 transfers of its employees. Rules implementing the provisions
86 of this section may be adopted jointly or separately by the
87 governing boards, the commission or the council in accor-
88 dance with section six, article one of this chapter and, in the
89 case of the commission and council, in accordance with
90 article three-a, chapter twenty-nine-a of this code.

§18B-7-15. Merit increases.

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

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

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

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

8 (2) Determining the advantages and disadvantages of
9 maintaining the internal preferences for hiring, promoting
10 and transferring classified employees;

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

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

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

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

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

28 (b) The commission and council shall complete the work
29 and report their findings, conclusions and recommendations,
30 together with drafts of any legislation necessary to effectuate
31 the recommendations, to the Legislative Oversight Commis-
32 sion on Education Accountability no later than January 1,
33 2012.

ARTICLE 8. HIGHER EDUCATION FACULTY.

§18B-8-1. Definitions.

1 As used in this article:

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

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

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

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

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

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

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

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

13 (2) Faculty are recognized for outstanding performance;

14 (3) Equity among salaries is maintained; and

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

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

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

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

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

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

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

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

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

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

17 (b) An individual who remains in governmental employ-
18 ment with leave granted in accordance with this section
19 forfeits all rights to academic tenure, rank and position
20 formerly held at the employing institution at the end of the
21 eighth year of government employment.

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

1 (a) For the purposes of this section, "Probationary faculty
2 member" means the definition adopted in a joint rule
3 promulgated by the commission and council. The rights
4 provided to probationary faculty members by this section are

5 in addition to, and not in lieu of, other rights afforded to
6 them by other rules and other provisions of law.

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

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

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

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

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

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

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

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

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

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

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

§18B-9-2. Definitions.

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

3 (a) “Classified employee” or “employee” means a regular
4 full-time or regular part-time employee of an organization
5 who holds a position that is assigned a particular job title
6 and pay grade in accordance with the personnel classifica-
7 tion and compensation system established by this article or
8 by the commission and council;

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) For purposes of this article, an organization has
24 achieved full funding of the temporary salary schedule
25 established by this section when it provides, in total, one
26 hundred percent of the funds needed to meet the salary
27 funding target as calculated in October, 2010, in a report,
28 required by a prior enactment of this section, and presented
29 to the Legislative Oversight Commission on Education
30 Accountability. Until an organization has achieved full
31 funding as described and has received certification to this
32 effect from the commission or council, as appropriate, the
33 following requirements apply:

34 (1) Classified salary increases distributed within the
35 organization shall be provided in accordance with the

36 uniform classification and compensation system established
37 by this article and rules of the commission and council and
38 shall be applied toward achieving full funding of the tempo-
39 rary salary schedule; and

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

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

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

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

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

70 **TEMPORARY HIGHER EDUCATION**
 71 **CLASSIFIED EMPLOYEE ANNUAL**
 72 **SALARY SCHEDULE YEARS OF EXPERIENCE**

73	PAY	0	1	2	3	4	5	6	7
74	GRADE								
75	1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900
76	2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687
77	3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546
78	4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478
79	5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469
80	6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547
81	7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697
82	8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950
83	9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290
84	10	19,916	20,421	20,938	21,484	22,029	22,602	23,176	23,763
85	11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288
86	12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924
87	13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701
88	14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631
89	15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715
90	16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981
91	17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456
92	18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142
93	19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064
94	20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460
95	21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170
96	22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224
97	23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653
98	24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485
99	25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781
100	PAY	8	9	10	11	12	13	14	15
101	GRADE								
102	1	15,221	15,541	15,876	16,226	16,575	16,939	17,304	17,682
103	2	16,036	16,386	16,750	17,129	17,507	17,886	18,294	18,687
104	3	16,925	17,304	17,697	18,090	18,498	18,920	19,343	19,780
105	4	17,872	18,279	18,702	19,139	19,576	20,027	20,493	20,959
106	5	18,906	19,343	19,794	20,260	20,741	21,222	21,717	22,227
107	6	20,013	20,479	20,974	21,469	21,994	22,518	23,057	23,596
108	7	21,192	21,717	22,241	22,780	23,334	23,902	24,484	25,081
109	8	22,489	23,042	23,610	24,193	24,805	25,416	26,043	26,684
110	9	23,887	24,484	25,096	25,737	26,378	27,048	27,732	28,417
111	10	24,379	25,008	25,638	26,295	26,980	27,666	28,379	29,106
112	11	25,945	26,617	27,316	28,015	28,757	29,498	30,267	31,064
113	12	27,638	28,365	29,120	29,890	30,687	31,498	32,323	33,176
114	13	29,470	30,267	31,078	31,918	32,771	33,652	34,561	35,484
115	14	31,470	32,323	33,204	34,114	35,051	36,002	36,981	38,002

116	15	33,624	34,561	35,512	36,505	37,512	38,547	39,624	40,715
117	16	35,974	36,981	38,030	39,093	40,198	41,331	42,492	43,694
118	17	38,519	39,624	40,757	41,918	43,121	44,352	45,611	46,925
119	18	41,303	42,506	43,736	44,995	46,296	47,639	49,023	50,450
120	19	47,410	48,801	50,238	51,719	53,230	54,801	56,416	58,062
121	20	50,941	52,452	54,023	55,623	57,284	58,990	60,755	62,550
122	21	54,786	56,431	58,137	59,902	61,712	63,568	65,482	67,472
123	22	58,975	60,785	62,640	64,555	66,530	68,579	70,674	72,828
124	23	63,568	65,527	67,562	69,656	71,826	74,040	76,344	78,708
125	24	68,579	70,734	72,948	75,237	77,601	80,039	82,552	85,156
126	25	74,070	76,419	78,842	81,356	83,944	86,607	89,360	92,202

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

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

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

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

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

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

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

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

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

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

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

17 (1) Develop and implement a classification and compensa-
18 tion system that is fair, transparent, understandable, simple
19 to administer, self-regulating and adaptable to meet future
20 goals and priorities;

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

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

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

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

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

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

39 (8) Improve the process for evaluating jobs, including, but
40 not limited to, mandating training and development in best
41 human resources practices and directing that key terms, job
42 titles and evaluation forms are consistent across organiza-
43 tions; and

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

§18B-9A-2. Definitions.

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

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

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

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

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

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

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

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

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

31 (i) "Nonclassified employee" means an employee of an
32 organization who holds a position that is not assigned a
33 particular job and job title within the classification system
34 established by this article, article nine, and by duly promul-
35 gated and adopted rules of the commission and council and
36 who meets one or more of the following criteria:

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

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

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

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

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

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

55 (n) "Position information questionnaire" or "PIQ" means
56 a tool used in the creation and evaluation of position descrip-
57 tions and includes the factors of knowledge, experience,
58 complexity and problem solving, freedom of action, scope
59 and effect, breadth of responsibility, intra-systems contacts,
60 external contacts, direct supervision of personnel, indirect
61 supervision of personnel and health, safety and physical
62 considerations.

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

§18B-9A-3. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) A systematic method for appointing committee mem-
12 bers who are representative of all the higher education
13 organizations and affected constituent groups including

14 specifically providing for membership selections to be made
15 from nominations from these higher education organizations
16 and affected constituent groups; and

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

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

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

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

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

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

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

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

46 (3) Overseeing the annual internal market review;

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

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

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

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

1 (a) The commission and council shall develop and maintain
2 a market salary structure and minimum salary schedules and
3 ensure that all organizations under their respective jurisdic-
4 tions adhere to state and federal laws and duly promulgated
5 and adopted organization rules.

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

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

10 (2) Approval of the job evaluation plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (f) The commission and council jointly may perform an
43 annual review of market salary data to determine how
44 salaries have changed in the external market. Based on data

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

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

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

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

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

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

1 (a) Notwithstanding any provision of law or rule to the
2 contrary, the commission and council jointly shall design,

3 develop, implement and administer the personnel system of
4 classification and compensation pursuant to this article and
5 articles seven, eight and nine of this chapter. In developing
6 and designing the system, they shall give careful consider-
7 ation to the recommendations and supporting documentation
8 contained in the *Final Report to the Select Committee on*
9 *Higher Education Personnel*, prepared pursuant to section
10 thirteen, article one-b of this chapter, which was received
11 and approved by the Select Committee on January 11, 2010.

12 (b) *Classification and compensation system rule.* —

13 By November 1, 2011, the commission and council shall
14 propose a joint rule or rules for legislative approval in
15 accordance with article three-a, chapter twenty-nine-a of
16 this code to implement the provisions of this article and
17 articles seven, eight and nine of this chapter. The rule shall
18 establish a classification and compensation system that
19 incorporates best human resources practices and takes into
20 consideration the recommendations of the Legislative Select
21 Committee on Higher Education Personnel. At a minimum,
22 the system rule shall address the areas of organization
23 accountability, employee classification and compensation,
24 performance evaluation and development of organization
25 rules.

26 (1) *Organization accountability.* —

27 The system rule shall provide a procedure for correcting
28 deficiencies identified in the human resources reviews
29 conducted pursuant to section nine, article seven of this
30 chapter. The procedure shall include, but is not limited to,
31 the following components:

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

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

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

40 (ii) When a major deficiency is identified, the commission
41 or council, as appropriate, shall notify the governing board
42 of the institution in writing, giving particulars of the defi-
43 ciency and outlining steps the governing board is required to
44 take to correct the deficiency.

45 (iii) The governing board shall correct the major deficiency
46 within four months and shall notify the commission or
47 council, as appropriate, when the deficiency has been
48 corrected.

49 (iv) If the governing boards fail to correct the major
50 deficiency or fails to notify the commission or council, as
51 appropriate, that the deficiency has been corrected within a
52 period of four months from the time the governing board
53 receives notification, the commission or council shall apply
54 sanctions as specified:

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

59 (II) Other sanctions may include, but are not limited to,
60 suspending new hiring by the organization and prohibiting
61 compensation increases for key administrators who have
62 authority over the areas of major deficiency until the
63 identified deficiencies are corrected.

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

69 (2) *Employee classification and compensation.* — The
70 system shall establish a classification and compensation
71 system to accomplish the following objectives:

72 (A) Moving classified employees through the classification
73 system based on performance and other objective, measur-
74 able factors including education, years of experience in
75 higher education and experience above position require-
76 ments;

77 (B) Achieving and maintaining appropriate levels of
78 employee dispersion across steps;

79 (C) Assigning each current employee to an initial step for
80 his or her pay grade that is closest to and exceeds his or her
81 current salary regardless of previous education, experience
82 or performance. The rule shall provide that the salary of a
83 current employee may not be reduced by a job reclassifica-
84 tion, a modification of the market salary schedule, or other
85 conditions that the commission and the council consider
86 appropriate and reasonable;

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

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

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

98 (G) Specifying that the acceptable period that may elapse
99 between the time when an employee files a formal request
100 for a position review and the time when the review is
101 completed may not exceed forty-five days. An organization

102 that fails to complete a review within the specified time shall
103 provide the employee back pay from the date the request for
104 review was received if the review, when completed, produces
105 a reclassification of the position into a job in a higher pay
106 grade;

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

113 (I) Providing for recommendations from the Compensation
114 Planning and Review Committee and the Job Classification
115 Committee to be considered by the commission and the
116 council and to be included in the legislative reporting
117 process pursuant to section eight, article seven of this
118 chapter; and

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

121 (3) *Performance evaluations.* — The system rule shall
122 provide for developing and implementing a consistent,
123 objective performance evaluation model and shall mandate
124 that training in conducting performance evaluations be
125 provided for all organization personnel who hold supervisory
126 positions.

127 (c) *Emergency rule.* —

128 (1) The Legislature hereby finds that an emergency exists
129 and, therefore, the commission and council shall propose a
130 joint emergency rule or rules by November 1, 2011, in
131 accordance with article three-a, chapter twenty-nine-a of
132 this code to implement the provisions of this article and
133 articles seven, eight and nine of this chapter.

134 (2) The commission and council shall file the emergency
135 rule or rules with the Legislative Oversight Commission on

136 Education Accountability by the date specified in subdivi-
137 sion (1) of this subsection and may not implement the
138 emergency rule or rules without prior approval.

139 (d) *Organization rules.* --

140 (1) Each organization shall promulgate and adopt a rule or
141 rules in accordance with the provisions of section six, article
142 one of this chapter to implement requirements contained in
143 the classification and compensation system rule or rules of
144 the commission and council. The commission and council
145 shall provide a model personnel rule for the organizations
146 under their jurisdiction and shall provide technical assis-
147 tance in rulemaking as requested.

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

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

160 (4) If an organization fails to adopt a rule or rules as
161 mandated by this subsection, the commission and council
162 may prohibit it from exercising any flexibility or implement-
163 ing any discretionary provision relating to human resources
164 contained in statute or in a commission or council rule until
165 the organization's rule requirements have been met.

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

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

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

176 (C) Receives approval for the classification and compensa-
177 tion rule from the appropriate chancellor in accordance with
178 this section; and

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

181 (6) Notwithstanding any provision of this code to the
182 contrary, each chancellor, or his or her designee, has the
183 authority and the duty to review each classification and
184 compensation rule promulgated by an organization under his
185 or her jurisdiction and to recommend changes to the rule to
186 bring it into compliance with state and federal law, commis-
187 sion and council rules or legislative, commission and council
188 intent. Each chancellor may reject or disapprove any rule, in
189 whole or in part, if he or she determines that it is not in
190 compliance with law or rule or if it is inconsistent with
191 legislative, commission and council intent.

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

1 (a) Sweeping cultural changes are needed to implement the
2 recommendations of the Select Committee on Higher
3 Education Personnel and the provisions of this article and
4 articles seven, eight and nine of this code. These kinds of
5 changes require dedication and cooperation from all em-
6 ployee classes across the two systems of public higher
7 education, the commission, council and state policymakers.
8 The primary responsibility for implementation, however,
9 rests with the commission and the council who shall provide

10 leadership and assistance to the human resources profession-
11 als within each organization to bring about the changes
12 successfully.

13 (b) The implementation process shall be carried out in
14 incremental steps, some of which may occur simultaneously.
15 The steps include the following:

16 (1) Communicating with organization employees and
17 administrators to acquaint them with the guiding principles
18 of the classification and compensation system. The principles
19 which undergird the policy changes are designed to promote
20 fairness, accountability, credibility, transparency and a
21 systematic approach to progress (FACTS for Higher Educa-
22 tion). The discussion shall explain the origin of changes in
23 law and policy and show how these are the result of four
24 years of study culminating in the findings and recommenda-
25 tions contained in the *Final Report to the Select Committee*
26 *on Higher Education Personnel* (January 11, 2010).

27 (2) Seeking out credentialed, experienced human resources
28 professionals to provide staff support to the commission,
29 council and organizations, pursuant to section two-a, article
30 four of this chapter, who are committed to creating a culture
31 of constant improvement in a complex and rapidly changing
32 environment. These professionals are catalysts to promote
33 the Fair, Accountable, Credible, Transparent, and System-
34 atic (FACTs) principles and to serve the organizations by
35 assisting them in developing and maintaining best human
36 resources practices.

37 (3) Conducting a review of the human resources function at
38 each organization pursuant to section nine, article seven of
39 this chapter to identify best practices and areas of defi-
40 ciency.

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

46 (5) Given that the state is considering a unified enterprise
47 resource program, the commission and council shall conduct
48 a study to determine whether a human resources information
49 system capable of meeting a wide range of data requirements
50 to support personnel and policy initiatives is necessary. The
51 findings of the study, along with any recommendations, shall
52 be reported to the Legislative Oversight Commission on
53 Education Accountability by December 1, 2011.

54 (6) Establishing the Compensation Planning and Review
55 Committee pursuant to section five of this article and the Job
56 Classification Committee pursuant to section four of this
57 article whose members participate and represent a broad
58 range of higher education interests in the decision and
59 policy-making process.

60 (7) Providing data throughout the implementation process
61 to the Legislative Oversight Commission on Education
62 Accountability to inform state policymakers of progress and
63 to provide a forum for further discussion of higher education
64 personnel issues and employee concerns.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE
INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-1. Enrollment, tuition and other fees at education institu-
tions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees
2 for each academic term for the different classes or categories
3 of students enrolling at the state institution of higher
4 education under its jurisdiction and may include among the
5 tuition and fees any one or more of the following as defined
6 in section one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) A governing board may establish a single special
11 revenue account for each of the following classifications of
12 fees:

13 (1) All tuition and required educational and general fees
14 collected;

15 (2) All auxiliary and auxiliary capital fees collected; and

16 (3) All required educational and general capital fees
17 collected to support existing systemwide and institutional
18 debt service and future systemwide and institutional debt
19 service, capital projects and campus renewal for educational
20 and general facilities.

21 (4) Subject to any covenants or restrictions imposed with
22 respect to revenue bonds payable from the accounts, a
23 governing board may expend funds from each special
24 revenue account for any purpose for which funds were
25 collected within that account regardless of the original
26 purpose for which the funds were collected.

27 (c) The purposes for which tuition and fees may be ex-
28 pended include, but are not limited to, health services,
29 student activities, recreational, athletic and extracurricular
30 activities. Additionally, tuition and fees may be used to
31 finance a students' attorney to perform legal services for
32 students in civil matters at the institutions. The legal services
33 are limited to those types of cases, programs or services
34 approved by the president of the institution where the legal
35 services are to be performed.

36 (d) By October 1, 2011, the commission and council each
37 shall propose a rule for legislative approval in accordance
38 with article three-a, chapter twenty-nine-a of this code to
39 govern the fixing, collection and expenditure of tuition and
40 other fees by the governing boards under their respective
41 jurisdictions.

42 (e) The schedule of all tuition and fees, and any changes in
43 the schedule, shall be entered in the minutes of the meeting

44 of the appropriate governing board and the board shall file
45 with the commission or council, or both, as appropriate, and
46 the Legislative Auditor a certified copy of the schedule and
47 changes.

48 (f) The governing boards shall establish the rates to be
49 charged full-time students, as defined in section one-b of this
50 article, who are enrolled during a regular academic term.

51 (1) Undergraduate students taking fewer than twelve credit
52 hours in a regular term shall have their fees reduced pro rata
53 based upon one twelfth of the full-time rate per credit hour
54 and graduate students taking fewer than nine credit hours in
55 a regular term shall have their fees reduced pro rata based
56 upon one ninth of the full-time rate per credit hour.

57 (2) Fees for students enrolled in summer terms or other
58 nontraditional time periods shall be prorated based upon the
59 number of credit hours for which the student enrolls in
60 accordance with this subsection.

61 (g) All fees are due and payable by the student upon
62 enrollment and registration for classes except as provided in
63 this subsection:

64 (1) The governing boards shall permit fee payments to be
65 made in installments over the course of the academic term.
66 All fees shall be paid prior to awarding course credit at the
67 end of the academic term.

68 (2) The governing boards also shall authorize the accep-
69 tance of credit cards or other payment methods which may
70 be generally available to students for the payment of fees.
71 The governing boards may charge the students for the
72 reasonable and customary charges incurred in accepting
73 credit cards and other methods of payment.

74 (3) If a governing board determines that a student's
75 finances are affected adversely by a legal work stoppage, it
76 may allow the student an additional six months to pay the

77 fees for any academic term. The governing board shall
78 determine on a case-by-case basis whether the finances of a
79 student are affected adversely.

80 (4) The commission and council jointly shall propose a rule
81 in accordance with article three-a, chapter twenty-nine-a of
82 this code defining conditions under which a governing board
83 may offer tuition and fee deferred payment plans itself or
84 through third parties.

85 (5) A governing board may charge interest or fees for any
86 deferred or installment payment plans.

87 (h) In addition to the other fees provided in this section,
88 each governing board may impose, collect and distribute a
89 fee to be used to finance a nonprofit, student-controlled
90 public interest research group if the students at the institu-
91 tion demonstrate support for the increased fee in a manner
92 and method established by that institution's elected student
93 government. The fee may not be used to finance litigation
94 against the institution.

95 (i) Governing boards shall retain tuition and fee revenues
96 not pledged for bonded indebtedness or other purposes in
97 accordance with the tuition rules proposed by the commis-
98 sion and council pursuant to this section. The tuition rules
99 shall address the following areas:

100 (1) Providing a basis for establishing nonresident tuition
101 and fees;

102 (2) Allowing governing boards to charge different tuition
103 and fees for different programs;

104 (3) Authorizing a governing board to propose to the
105 commission, council or both, as appropriate, a mandatory
106 auxiliary fee under the following conditions:

107 (A) The fee shall be approved by the commission, council
108 or both, as appropriate, and either the students below the

109 senior level at the institution or the Legislature before
110 becoming effective;

111 (B) Increases may not exceed previous state subsidies by
112 more than ten percent;

113 (C) The fee may be used only to replace existing state funds
114 subsidizing auxiliary services such as athletics or bookstores;

115 (D) If the fee is approved, the amount of the state subsidy
116 shall be reduced annually by the amount of money generated
117 for the institution by the fees. All state subsidies for the
118 auxiliary services shall cease five years from the date the
119 mandatory auxiliary fee is implemented;

120 (E) The commission or council or both, as appropriate,
121 shall certify to the Legislature annually by October 1 the
122 amount of fees collected for each of the five years;

123 (4) Establishing methodology, where applicable, to ensure
124 that, within the appropriate time period under the compact,
125 community and technical college tuition rates for students in
126 all community and technical colleges will be commensurate
127 with the tuition and fees charged by their peer institutions.

128 (j) A penalty may not be imposed by the commission or
129 council upon any governing board based upon the number of
130 nonresidents who attend the institution unless the commis-
131 sion or council determines that admission of nonresidents to
132 any institution or program of study within the institution is
133 impeding unreasonably the ability of resident students to
134 attend the institution or participate in the programs of the
135 institution. The governing boards shall report annually to the
136 commission or council on the numbers of nonresidents and
137 any other enrollment information the commission or council
138 may request.

139 (k) Tuition and fee increases of the governing boards,
140 including the governing boards of Marshall University and
141 West Virginia University, are subject to rules adopted by the
142 commission and council pursuant to this section and in

143 accordance with article three-a, chapter twenty-nine-a of
144 this code. The commission or council, as appropriate, shall
145 examine individually each request from a governing board
146 for an increase and make its determinations as follows:

147 (1) A tuition and fee increase greater than five percent for
148 resident students proposed by a governing board requires the
149 approval of the commission or council, as appropriate.

150 (2) A fee used solely for the purpose of complying with the
151 athletic provisions of 20 U.S.C. 1681, *et seq.*, known as Title
152 IX of the Education Amendment of 1972, is exempt from the
153 limitations on fee increases set forth in this subsection for
154 three years from the effective date of the section.

155 (3) In determining whether to approve or deny a governing
156 board's request for a tuition and/or fee increase for resident
157 students greater than the increases granted pursuant to
158 subdivision (1) of this subsection, the commission or council
159 shall determine the progress the governing board has made
160 toward meeting the conditions outlined in this subsection
161 and shall make this determination the predominate factor in
162 its decision. The commission or council shall consider the
163 degree to which each governing board has met the following
164 conditions:

165 (A) Maximizes resources available through nonresident
166 tuition and fee charges to the satisfaction of the commission
167 or council;

168 (B) Consistently achieves the benchmarks established in
169 the compact pursuant to article one-d of this chapter;

170 (C) Continuously pursues the statewide goals for post-
171 secondary education and the statewide compact established
172 in this chapter;

173 (D) Demonstrates to the satisfaction of the commission or
174 council that an increase will be used to maintain high-
175 quality programs at the institution;

176 (E) Demonstrates to the satisfaction of the commission or
177 council that the governing board is making adequate
178 progress toward achieving the goals for education estab-
179 lished by the southern regional education board;

180 (F) Demonstrates to the satisfaction of the commission or
181 council that the governing board has considered the average
182 per capita income of West Virginia families and their ability
183 to pay for any increases; and


184 (G) Demonstrates to the satisfaction of the commission or
185 council that base appropriation increases have not kept pace
186 with recognized nation-wide inflationary benchmarks;

187 (4) This section does not require equal increases among
188 governing boards nor does it require any level of increase by
189 a governing board.

190 (5) The commission and council shall report to the Legisla-
191 tive Oversight Commission on Education Accountability
192 regarding the basis for approving or denying each request as
193 determined using the criteria established in this subsection.

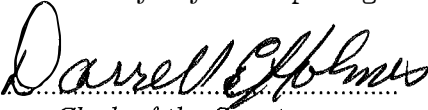
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

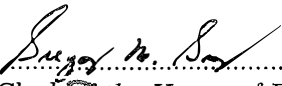

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Chairman Senate Committee

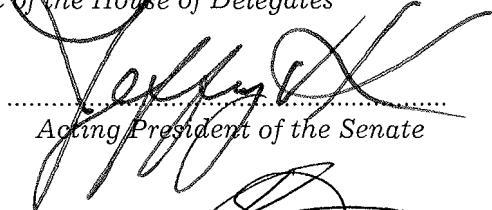

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Chairman House Committee

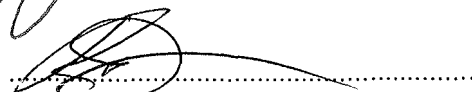
Originated in the Senate.

In effect ninety days from passage.

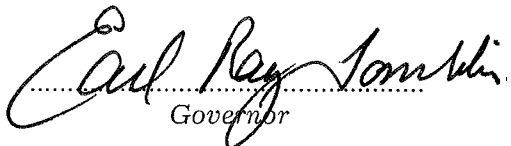

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Clerk of the Senate


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Clerk of the House of Delegates


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Acting President of the Senate


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Speaker of the House of Delegates

The within is approved this the 5th
Day of April, 2011.


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Governor