

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2542

BY DELEGATES STATLER, ESPINOSA, COWLES, BLAIR, AMBLER,

SHOTT, KESSINGER, HAMILTON, DEAN, ELLINGTON AND LEWIS

[Passed March 14, 2017; in effect ninety days from passage.]

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13 to the Vice Chancellor for Human Resources; eliminating outdated and redundant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17 higher education organization classified employee salary schedule, outdated associated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

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

Be it enacted by the Legislature of West Virginia:

1 That §18B-7-9, §18B-7-11 and §18B-7-12 of the Code of West Virginia, 1931, as
2 amended, be repealed; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code, be
3 repealed; that §18B-9A-3 and §18B-9A-8 of said code, be repealed; that §18B-1B-5 of said code
4 be amended and reenacted; that §18B-4-1 and §18B-4-2a of said code be amended and
5 reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-6 and §18B-7-8 of said code be amended
6 and reenacted; that said code be amended by adding thereto a new section, designated §18B-8-
7 7; that §18B-9A-2, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and
8 reenacted; and that said code be amended by adding thereto a new article, designated §18B-9B-
9 1, all to read as follows:

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION

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

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

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

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

8 (2) Demonstrates strong communication skills;

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

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

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

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

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

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

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

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

37 (h) The commission may employ a Vice Chancellor for State Colleges who serves at the
38 will and pleasure of the commission. At a minimum, the Vice Chancellor for State Colleges shall
39 perform the following duties:

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

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

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

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

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

50 (i) On behalf of the commission, the chancellor may enter into agreements with any state
51 agency or political subdivision of the state, any state institution of higher education or any other
52 person or entity to enlist staff assistance to implement the powers and duties assigned by the
53 commission or by state law.

54 (j) The chancellor is responsible for the daily operations of the commission and has the
55 following responsibilities relating to the commission and the governing boards under its
56 jurisdiction:

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

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

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

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

69 (5) To consult with institutions on human relations policies and rules;

70 (6) To perform all other duties and responsibilities assigned by the commission or by state
71 law.

72 (k) The chancellor shall be reimbursed for all actual and necessary expenses incurred in
73 the performance of all assigned duties and responsibilities.

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

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

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

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

94 (2) Appropriate coordination of missions and programs.

ARTICLE 4. GENERAL ADMINISTRATION.

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

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

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

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

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

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

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

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

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

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

1 The chancellor or a qualified designee shall:

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

4 (2) Assume responsibility for coordinating retirement benefits programs for all employees,
5 including designing these programs, and for supporting each higher education organization in
6 implementing the programs;

7 (3) Assist, as requested by an organization, organizations with classification and/or
8 compensation programs for faculty and/or nonclassified employees, including, as appropriate,
9 design and implementation of the programs; and

10 (4) As requested by organizations, assist with carrying out the following duties related to
11 training and development:

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

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

16 (C) Planning, conducting and coordinating management inventories, appraisals,
17 placement, counseling and training;

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

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

ARTICLE 7. PERSONNEL GENERALLY.

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

1 (a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a
2 of this chapter is to establish basic human resources policies applicable to public higher education
3 capable of, but not limited to, assisting the governing boards in meeting the following objectives:

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

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

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

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

11 (5) Providing for job requirements and performance standards for classified staff positions
12 with annual job performance evaluations for classified staff, and provisions for job performance
13 counseling when appropriate.

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

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

19 (8) Providing for institutional flexibility with meaningful accountability;

20 (9) Adhering to federal and state laws;

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

22 (11) Enhancing the sharing of best practices throughout the state higher education
23 system.

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

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

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

36 (d) It is the intent of the Legislature to require each higher education organization to
37 achieve full funding of the minimum salary levels for classified employees established in section
38 six, article nine-a of this chapter.

§18B-7-2. Definitions.

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

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

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

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

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

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

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

23 (7) "More senior employees" means an employee who has greater longevity with the
24 institution than another employee who is also subject to layoff as part of a reduction in force.

§18B-7-3. Reducing workforce.

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

6 (b) All decisions by an organization or its agents concerning reductions in workforce of
7 full-time classified employees shall be made in accordance with this section and pursuant to a
8 rule adopted by the applicable governing board of an organization, after consultation with and
9 providing 30 days written notice to the applicable staff council of an organization.

10 (1) For layoffs for reason of lack of funds or work, or abolition of position or material
11 changes in duties or organization, the institution may layoff the incumbent in the position being
12 eliminated. In the case of elimination of some but not all of the positions of the same job title,
13 consideration shall be given to an employee's documented quality of work performance as
14 demonstrated in performance evaluations of record (including, but not limited to, disciplinary
15 records), skills, seniority as measured by years of service, or other factors, as determined by the
16 board.

17 (2) If the organization desires to lay off a more senior employee, the organization may
18 offer to the more senior employee a severance package, the value of which shall not exceed the
19 more senior employee's salary for one year.

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

1 (a) Each higher education organization shall establish and operate an employee
2 continuing education and development program under a joint rule or rules promulgated by the
3 governing board. Funds allocated or made available for employee continuing education and
4 development may be used to compensate and pay expenses for any employees pursuing
5 additional academic study or training to equip themselves better for their duties.

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

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

16 (1) Shall be developed with emphasis on distance learning, in consideration to limiting
17 travel demands on employees; and

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

§18B-7-8. Reporting.

1 (a) *Personnel reports.* —

2 (1) Beginning December 1, 2020 and every five years thereafter, the commission and
3 council shall report to the Legislative Oversight Commission on Education Accountability
4 addressing the following issues:

5 (A) Progress made by organizations toward achieving fair compensation of all employees;
6 and

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

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

18 (A) Human resources department metrics by organization:

19 (i) Areas of human resources functions outsourced to external entities;

20 (ii) Total expenses per full-time equivalent employee; and

21 (iii) Tuition revenue per full-time equivalent employee.

22 (B) Human resources expense data:

23 (i) Ratio of human resources expenses to operating expenses; and

24 (ii) Total human resources expense per organization employee.

25 (C) Compensation data:

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

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

29 and

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

32 (D) System metrics:

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

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

36 (b) *Job classification system report.* —

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

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

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

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

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

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

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

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

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

1 Consistent with this article, and after consulting with and providing 30 days written notice
2 to the faculty senate, a governing board may adopt a rule relating to the faculty. The provisions
3 of any rule adopted by a governing board preempt any conflicting rule adopted by the commission
4 or the council.

ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

§18B-9A-2. Definitions.

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

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

5 (2) "Classified employee" or "employee" means a regular full-time or regular part-time
6 employee of an organization who: (i) does not meet the duties test for exempt status under the
7 provisions of the Fair Labor Standards Act; and (ii) is not otherwise a nonclassified employee
8 designated pursuant to subdivision (11) of this section: *Provided*, That any employee of an
9 organization who was a classified employee as of January 1, 2017, retains that status unless
10 otherwise deemed a nonclassified employee pursuant to the provisions of subparts (A) through
11 (D) of subdivision (11) of this section.

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

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

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

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

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

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

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

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

35 (11) "Nonclassified employee" means, an employee of an organization who meets one or
36 more of the following criteria:

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

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

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

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

42 (E) Is hired after July 1, 2017, and meets the duties test for exempt status under the
43 provisions of the Fair Labor Standards Act at the time of hire or anytime thereafter; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (2) Overseeing the annual internal market review;

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

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

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

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

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

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

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

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

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

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

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

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

16 (d) The commission and council jointly shall use workforce compensation data provided
17 by Workforce West Virginia and other compensation data as is readily available from national
18 recognized sources, including compensation data of CUPA-HR, to establish the appropriate
19 external market conditions of classified positions. The commission and council, in consultation
20 with the Compensation Planning and Review Committee, may take any combination of the
21 following actions:

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

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

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

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

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

34 (1) The minimum salary amount for each pay grade on the classified salary schedule is
35 determined by applying a percentage determined after analysis of the market and existing

36 compensation levels to the annual market salary data. The commission and council may take into
37 consideration other factors they consider appropriate.

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

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

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

1 (a) Notwithstanding any provision of law or rule to the contrary, the commission and
2 council jointly shall design, develop, implement and administer the classified personnel system of
3 classification and compensation pursuant to this article and articles seven, eight and nine of this
4 chapter.

5 (b) *System rule.* —

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

11 (1) *Organization accountability.* —

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

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

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

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

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

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

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

31 Sanctions may include, but are not limited to, prohibiting compensation increases for key
32 administrators who have authority over the areas of major deficiency until the identified
33 deficiencies are corrected.

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

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

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

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

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

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

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

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

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

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

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

69 (3) *Performance evaluations.* — The system rule shall provide for developing and
70 implementing a consistent, objective performance evaluation model and shall mandate that

71 training in conducting performance evaluations be provided for all organization personnel who
72 hold supervisory positions.

73 (c) *Organization rules.* —

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

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

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

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

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

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

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

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

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

ARTICLE 9B. ORGANIZATION PERSONNEL RULES.

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

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

7 (b) West Virginia University; Marshall University; West Virginia School of Osteopathic
8 Medicine; or any other organization that provides notice to the commission or council, as
9 appropriate, may establish a classification and compensation rule, after consultation with and
10 providing 30 days written notice to the staff council of the applicable organization, that
11 incorporates best human resources practices and addresses the areas of organization
12 accountability, employee classification and compensation, performance evaluation, reductions in
13 force, and development of organization policies, and upon the adoption the provisions of article
14 nine-a of this chapter and any rule promulgated by the commission or the council thereto, is
15 inapplicable to the extent it conflicts with the rule promulgated by the organization: *Provided*, That
16 any rule adopted by an organization shall use the definitions of classified and nonclassified
17 employees established in section two of article nine-a of this chapter.

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

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

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

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

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

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

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

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

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

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2017.

.....
Governor