

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 330**

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

7 \_\_\_\_\_  
8 [Passed March 12, 2011; in effect ninety days from passage.]  
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11  
12 AN ACT to repeal §18-13-1 of the Code of West Virginia, 1931, as  
13 amended; to repeal §18-23-4a of said code; to repeal §18B-8-3a  
14 of said code; to repeal §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-  
15 8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code; to amend  
16 and reenact §12-1-12d of said code; to amend and reenact §18B-  
17 1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-4  
18 and §18B-1B-5 of said code; to amend and reenact §18B-2A-3,  
19 §18B-2A-4 and §18B-2A-8 of said code; to amend and reenact  
20 §18B-2B-3 of said code; to amend and reenact §18B-3-1, §18B-3-  
21 3 and §18B-3-4 of said code; to amend and reenact §18B-4-1 of  
22 said code; to amend said code by adding thereto a new section,  
23 designated §18B-4-2a; to amend and reenact §18B-5-9 of said  
24 code; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-3, §18B-  
25 7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-  
26 10, §18B-7-11 and §18B-7-12 of said code; to amend said code

1 by adding thereto four new sections, designated §18B-7-13,  
2 §18B-7-14, §18B-7-15 and §18B-7-16; to amend and reenact §18B-  
3 8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code;  
4 to amend said code by adding thereto a new section, designated  
5 §18B-8-2; to amend and reenact §18B-9-1, §18B-9-2, §18B-9-3  
6 and §18B-9-4 of said code; to amend said code by adding  
7 thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-  
8 9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-  
9 8; and to amend and reenact §18B-10-1 of said code, all  
10 relating to public higher education personnel generally; state  
11 organizations of higher education; public higher education  
12 governance; repealing sunset provision for pilot investment  
13 program for Marshall University and West Virginia University;  
14 extending authority to increase certain types of investment  
15 under certain circumstances; specifying and clarifying rule-  
16 making procedures; specifying certain powers and duties of  
17 certain higher education organizations; requiring certain  
18 governing boards to reach certain graduation rates by certain  
19 date; establishing classification and compensation for certain  
20 employees; providing legislative purposes and intent;  
21 providing certain definitions; requiring creation of certain  
22 professional staff positions; setting forth minimum  
23 qualifications and specifying duties; requiring organization  
24 rulemaking; authorizing certain supplemental retirement,  
25 health and welfare benefit plans for certain employees;  
26 providing for certain employer and employee matches;

1 authorizing employee payroll deductions; requiring  
2 establishment of continuing education and professional  
3 development programs for certain employees; setting forth  
4 certain employment practices; requiring certain periodic  
5 reports; specifying data to be included in reports and  
6 designating report due dates; providing certain exceptions to  
7 report due dates; requiring periodic reviews of human  
8 resources functions at certain higher education organizations;  
9 setting forth purposes of reviews; specifying review criteria  
10 and designating completion dates; requiring prior notice of  
11 reviews and setting forth certain exceptions; authorizing  
12 compensatory time off for certain employees in certain  
13 instances; setting forth conditions; defining "nonclassified"  
14 employees; limiting percentage of employees designated  
15 nonclassified and providing certain exceptions; establishing  
16 formula for calculating percentage; providing effective date  
17 for meeting percentage limits and requiring compliance  
18 reports; authorizing certain employment by mutual agreement;  
19 setting forth terms, conditions and applicability of  
20 agreements; requiring probationary period for certain  
21 employees; authorizing catastrophic leave banks and leave  
22 transfer for certain employees; setting forth terms and  
23 conditions for participation; codifying certain current  
24 practices; authorizing merit salary increases for certain  
25 employees under certain conditions; requiring study of certain  
26 employment practices; requiring report and specifying data and

1 report due date; requiring faculty salary rules and providing  
2 for salary increases in certain instances; authorizing  
3 sabbatical leaves for certain professional personnel;  
4 specifying terms and conditions for participation; maintaining  
5 certain rights and benefits during leaves of absence under  
6 certain circumstances; requiring definition of certain terms;  
7 requiring notice of employment decisions to probationary  
8 faculty members by certain date and providing for hearings in  
9 certain instances; stating legislative intent regarding  
10 funding for certain employee salary schedules; specifying  
11 applicability of certain statutes; establishing certain terms  
12 and conditions and providing certain exceptions; providing  
13 formulas for making certain salary calculations; requiring  
14 certification of certain higher education organizations  
15 relating to certain salary funding requirements; specifying  
16 applicability of certain rules; requiring review and approval  
17 process for certain rules and specifying responsibilities of  
18 certain professional personnel relating to rulemaking;  
19 providing for funding certain salary schedules; specifying  
20 certain consequences and sanctions and providing exceptions;  
21 providing short title; requiring maintenance of uniform job  
22 classification system; establishing job classification  
23 committee and specifying organization, powers and duties;  
24 assigning certain other powers and duties relating to job  
25 classification; establishing compensation planning and review  
26 committee and specifying organization, powers and duties;

1 providing for establishment of market salary structures and  
2 minimum salary schedules; requiring periodic updates and  
3 specifying certain other related powers and duties; providing  
4 for periodic market salary studies and specifying application  
5 of study findings; requiring certain salary comparisons and  
6 establishing limit on variations of average salaries among  
7 employee classes; specifying authority and duty of Higher  
8 Education Policy Commission and Council for Community and  
9 Technical College Education over classification and  
10 compensation system; requiring promulgation of certain  
11 personnel rules by certain date; authorizing emergency rules  
12 with prior approval; establishing parameters for rules;  
13 specifying mechanisms for correcting identified deficiencies  
14 and requiring and authorizing certain sanctions in certain  
15 instances; providing for hearing employee appeals; requiring  
16 performance evaluations for certain employees; requiring  
17 certain training for supervisory personnel; establishing terms  
18 and conditions for exercising certain operational  
19 flexibilities for governing boards; establishing goals for  
20 implementing certain statutes and rules; fixing certain  
21 implementation responsibilities; providing for review and  
22 approval of governing boards' requests for tuition and fee  
23 increases greater than set amounts; removing caps on increases  
24 in tuition and fees; making technical corrections; and  
25 deleting obsolete language.

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

1           That §18-13-1 of the Code of West Virginia, 1931, as amended,  
2 be repealed; that §18-23-4a of said code be repealed; that §18B-8-  
3 3a of said code be repealed; that §18B-9-2a, §18B-9-5, §18B-9-7,  
4 §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code be  
5 repealed; that §12-1-12d of said code be amended and reenacted;  
6 that §18B-1-2 and §18B-1-6 of said code be amended and reenacted;  
7 that §18B-1B-4 and §18B-1B-5 of said code be amended and reenacted;  
8 that §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code be amended and  
9 reenacted; that §18B-2B-3 of said code be amended and reenacted;  
10 that §18B-3-1, §18B-3-3 and §18B-3-4 of said code be amended and  
11 reenacted; that §18B-4-1 of said code be amended and reenacted;  
12 that said code be amended by adding thereto a new section,  
13 designated §18B-4-2a; that §18B-5-9 of said code be amended and  
14 reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5,  
15 §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and  
16 §18B-7-12 of said code be amended and reenacted; that said code be  
17 amended by adding thereto four new sections, designated §18B-7-13,  
18 §18B-7-14, §18B-7-15 and §18B-7-16; that §18B-8-1, §18B-8-3, §18B-  
19 8-4, §18B-8-5 and §18B-8-6 of said code be amended and reenacted;  
20 that said code be amended by adding thereto a new section,  
21 designated §18B-8-2; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4  
22 of said code be amended and reenacted; that said code be amended by  
23 adding thereto a new article, designated §18B-9A-1, §18B-9A-2,  
24 §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-  
25 8; and that §18B-10-1 of said code be amended and reenacted, all to  
26 read as follows:

1                   **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

2 **ARTICLE 1. STATE DEPOSITORIES.**

3 **§12-1-12d. Investments by Marshall University and West Virginia**  
4                   **University.**

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

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

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

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

5 (1) \$18 million for Marshall University and \$25 million for  
6 West Virginia University; or

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

10 (3) Notwithstanding subdivisions (1) and (2) of this  
11 subsection, with the approval of the Higher Education Policy  
12 Commission, Marshall University may increase the amount invested to  
13 \$30 million and West Virginia University may increase the amount  
14 invested to \$40 million.

15 (e) Investments by foundations that are authorized under this  
16 section shall be made in accordance with and subject to the  
17 provisions of the Uniform Prudent Investor Act codified as article  
18 six-c, chapter forty-four of this code. As part of its fiduciary  
19 responsibilities, each governing board shall establish investment  
20 policies in accordance with the Uniform Prudent Investor Act for  
21 those moneys invested with its foundation. The governing board  
22 shall review, establish and modify, if necessary, the investment  
23 objectives as incorporated in its investment policies so as to  
24 provide for the financial security of the moneys invested with its  
25 foundation. The governing boards shall give consideration to the  
26 following:



- 1 (1) Preservation of capital;
- 2 (2) Diversification;
- 3 (3) Risk tolerance;
- 4 (4) Rate of return;
- 5 (5) Stability;
- 6 (6) Turnover;
- 7 (7) Liquidity; and
- 8 (8) Reasonable cost of fees.

9 (f) A governing board shall report annually by December 31 to  
10 the Governor and to the Joint Committee on Government and Finance  
11 on the performance of investments managed by its foundation  
12 pursuant to this section.

13 (g) The amendments to this section in the second  
14 extraordinary session of the Legislature in 2010 shall apply  
15 retroactively so that the authority granted by this section shall  
16 be construed as if that authority did not expire on July 1, 2010.

17 **CHAPTER 18B. HIGHER EDUCATION.**

18 **ARTICLE 1. GOVERNANCE.**

19 **§18B-1-2. Definitions.**

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

23 (1) "Administratively linked community and technical college"  
24 means a state institution of higher education delivering community  
25 and technical college education and programs which has maintained

1 a contractual agreement to receive essential services from another  
2 accredited state institution of higher education prior to July 1,  
3 2008;

4 (2) "Advanced technology center" means a facility established  
5 under the direction of an independent community and technical  
6 college or the council for the purpose of implementing and  
7 delivering education and training programs for high-skill, high-  
8 performance Twenty-first Century workplaces;

9 (3) "Board of visitors" means the advisory board previously  
10 appointed for the West Virginia Graduate College and the advisory  
11 board previously appointed for West Virginia University Institute  
12 of Technology, which provide guidance to the Marshall University  
13 Graduate College and West Virginia University Institute of  
14 Technology, respectively;

15 (4) "Broker" or "brokering" means serving as an agent on  
16 behalf of students, employers, communities or responsibility areas  
17 to obtain education services not offered at that institution.  
18 These services include courses, degree programs or other services  
19 contracted through an agreement with a provider of education  
20 services either in-state or out-of-state;

21 (5) "Chancellor" means the Chancellor for Higher Education  
22 where the context refers to a function of the Higher Education  
23 Policy Commission. "Chancellor" means the Chancellor for Community  
24 and Technical College Education where the context refers to a  
25 function of the West Virginia Council for Community and Technical  
26 College Education;

1           (6) "Chancellor for Community and Technical College Education"  
2 means the chief executive officer of the West Virginia Council for  
3 Community and Technical College Education employed pursuant to  
4 section three, article two-b of this chapter;

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

8           (8) "Collaboration" means entering into an agreement with one  
9 or more providers of education services in order to enhance the  
10 scope, quality or efficiency of education services;

11          (9) "Community and technical college", in the singular or  
12 plural, means the free-standing community and technical colleges  
13 and other state institutions of higher education which deliver  
14 community and technical college education. This definition  
15 includes Blue Ridge Community and Technical College, Bridgemont  
16 Community and Technical College, Eastern West Virginia Community  
17 and Technical College, Kanawha Valley Community and Technical  
18 College, Mountwest Community and Technical College, New River  
19 Community and Technical College, Pierpont Community and Technical  
20 College, Southern West Virginia Community and Technical College,  
21 West Virginia Northern Community and Technical College and West  
22 Virginia University at Parkersburg;

23          (10) "Community and technical college education" means the  
24 programs, faculty, administration and funding associated with the  
25 delivery of community and technical college education programs;

26          (11) "Community and technical college education program" means

1 any college-level course or program beyond the high school level  
2 provided through a public institution of higher education resulting  
3 in or which may result in a two-year associate degree award  
4 including an associate of arts, an associate of science and an  
5 associate of applied science; certificate programs and skill sets;  
6 developmental education; continuing education; collegiate credit  
7 and noncredit workforce development programs; and transfer and  
8 baccalaureate parallel programs. All programs are under the  
9 jurisdiction of the council. Any reference to "post-secondary  
10 vocational education programs" means community and technical  
11 college education programs as defined in this subsection;

12 (12) "Council" means the West Virginia Council for Community  
13 and Technical College Education created by article two-b of this  
14 chapter;

15 (13) "Dual credit course" or "dual enrollment course" means a  
16 credit-bearing college-level course offered in a high school by a  
17 state institution of higher education for high school students in  
18 which the students are concurrently enrolled and receiving credit  
19 at the secondary level.

20 (14) "Essential conditions" means those conditions which shall  
21 be met by community and technical colleges as provided in section  
22 three, article three-c of this chapter;

23 (15) "Free-standing community and technical colleges" means  
24 Southern West Virginia Community and Technical College, West  
25 Virginia Northern Community and Technical College, and Eastern West  
26 Virginia Community and Technical College, which may not be operated

1 as branches or off-campus locations of any other state institution  
2 of higher education;

3 (16) "Governing boards" or "boards" means the institutional  
4 boards of governors created by section one, article two-a of this  
5 chapter;

6 (17) "Higher Education Policy Commission", "Policy Commission"  
7 or "Commission" means the commission created by section one,  
8 article one-b of this chapter;

9 (18) "Independent community and technical college" means a  
10 state institution of higher education under the jurisdiction of the  
11 Council which is independently accredited, is governed by its own  
12 independent governing board, and may not be operated as a branch or  
13 off-campus location of any other state institution of higher  
14 education. This definition includes Blue Ridge Community and  
15 Technical College, Bridgemont Community and Technical College,  
16 Eastern West Virginia Community and Technical College, Kanawha  
17 Valley Community and Technical College, Mountwest Community and  
18 Technical College, New River Community and Technical College,  
19 Pierpont Community and Technical College, Southern West Virginia  
20 Community and Technical College, West Virginia Northern Community  
21 and Technical College, and West Virginia University at Parkersburg;

22 (19) "Institutional compact" means the compact between the  
23 commission or council and a state institution of higher education  
24 under its jurisdiction, as described in section seven, article one-  
25 d of this chapter;

26 (20) "Institutional operating budget" or "operating budget"

1 means for any fiscal year an institution's total unrestricted  
2 education and general funding from all sources, including, but not  
3 limited to, tuition and fees and legislative appropriation, and any  
4 adjustments to that funding as approved by the commission or  
5 council based on comparisons with peer institutions or to reflect  
6 consistent components of peer operating budgets;

7 (21) "Peer institutions", "peer group" or "peers" means public  
8 institutions of higher education used for comparison purposes and  
9 selected by the commission pursuant to section three, article one-a  
10 of this chapter;

11 (22) "Rule" or "rules" means a regulation, standard, policy or  
12 interpretation of general application and future effect;

13 (23) "Sponsoring institution" means a state institution of  
14 higher education that maintained an administrative link to a  
15 community and technical college providing essential services prior  
16 to July 1, 2008. This definition includes institutions whose  
17 governing boards had under their jurisdiction a community and  
18 technical college, regional campus or a division delivering  
19 community and technical college education and programs;

20 (24) "State college" means Bluefield State College, Concord  
21 University, Fairmont State University, Glenville State College,  
22 Shepherd University, West Liberty University or West Virginia State  
23 University;

24 (25) "State institution of higher education" means any  
25 university, college or community and technical college under the  
26 jurisdiction of a governing board as that term is defined in this

1 section;

2 (26) "Statewide network of independently accredited community  
3 and technical colleges" or "community and technical college  
4 network" means the state institutions of higher education under the  
5 jurisdiction of the West Virginia Council for Community and  
6 Technical College Education which are independently accredited,  
7 each governed by its own independent governing board, and each  
8 having a core mission of providing affordable access to and  
9 delivering high quality community and technical education in every  
10 region of the state;

11 (27) "Vice Chancellor for Administration" means the person  
12 employed in accordance with section two, article four of this  
13 chapter. Any reference in this chapter or chapter eighteen-c of  
14 this code to "Senior Administrator" means Vice Chancellor for  
15 Administration;

16 (28) "Vice Chancellor for Human Resources" means the person  
17 employed by the commission and the council jointly pursuant to  
18 section two-a, article four of this chapter. The person employed  
19 as senior director of human resources by the commission on January  
20 1, 2011, becomes the Vice Chancellor for Human Resources on the  
21 effective date of this section; and

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

25 **§18B-1-6. Rulemaking.**

26 (a) The commission is hereby empowered to promulgate, adopt,

1 amend or repeal rules, in accordance with article three-a, chapter  
2 twenty-nine-a of this code, subject to section three of this  
3 article.

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

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

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

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



1           (3) The commission and council each shall promulgate a rule to  
2 guide the development and approval of rules made by their  
3 respective governing boards, including the governing boards of  
4 Marshall University and West Virginia University. The rules  
5 promulgated by the commission and council shall include, but are  
6 not limited to, the following provisions which shall be included in  
7 the rule on rules adopted by each governing board of a state  
8 institution of higher education:

9           (A) A procedure to ensure that public notice is given and that  
10 the right of interested parties to have a fair and adequate  
11 opportunity to respond is protected, including providing for a  
12 thirty-day public comment period prior to final adoption of a rule;

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

16           (C) A procedure to maximize Internet access to all proposed  
17 and approved rules, guidelines and other policy statements to the  
18 extent technically and financially feasible; and

19           (D) A procedure for the governing board to follow in  
20 submitting its rules for review and approval to the commission  
21 and/or council, as appropriate, except the following conditions  
22 apply for the governing boards of Marshall University and West  
23 Virginia University:

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

26           (ii) The commission shall return to the governing board its

1 comments and suggestions within thirty days of receiving the rule.

2 (iii) If a governing board receives comments or suggestions on  
3 a rule from the commission, it shall record these as part of the  
4 minute record. The rule is not effective and may not be  
5 implemented until the governing board holds a meeting and places on  
6 the meeting agenda the comments it has received from the  
7 commission.

8 (d) Nothing in this section requires that any rule  
9 reclassified or transferred by the commission or the council under  
10 this section be promulgated again under the procedures set out in  
11 article three-a, chapter twenty-nine-a of this code unless the rule  
12 is amended or modified.

13 (e) The commission and council each shall file with the  
14 Legislative Oversight Commission on Education Accountability any  
15 rule it proposes to promulgate, adopt, amend or repeal under the  
16 authority of this article.

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

21 (1) Any rule of a governing board which meets the definition  
22 set out in subsection (c) of this section and which has not been  
23 promulgated and adopted by formal vote of the appropriate governing  
24 board is void and may not be enforced;

25 (2) Any authority granted by this code which inherently  
26 requires the governing board to promulgate and adopt a rule is void

1 until the governing board complies with this section.

2 (g) Within thirty days of the adoption of a rule, including  
3 repeal or amendment of an existing rule, and before the change is  
4 implemented, a governing board shall furnish a copy of each rule  
5 which it has adopted to the commission or the council,  
6 respectively, for review and approval, except the governing boards  
7 of Marshall University and West Virginia University are subject to  
8 subsection (c) of this section.

9 (h) Annually, by October 1, each governing board shall file  
10 with the commission or the council, as appropriate, a list of all  
11 rules that were in effect for that institution on July 1 of that  
12 year, including the most recent date on which each rule was  
13 considered and adopted, amended or repealed by the governing board.  
14 For all rules adopted, amended or repealed after the effective date  
15 of this section, the list shall include a statement by the chair of  
16 the governing board certifying that the governing board has  
17 complied with this section when each listed rule was promulgated  
18 and adopted.

19 **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

20 **§18B-1B-4. Powers and duties of Higher Education Policy**  
21 **Commission.**

22 (a) The primary responsibility of the commission is to  
23 develop, establish and implement policy that will achieve the  
24 goals, objectives and priorities found in section one-a, article  
25 one and article one-d of this chapter. The commission shall

1 exercise its authority and carry out its responsibilities in a  
2 manner that is consistent and not in conflict with the powers and  
3 duties assigned by law to the West Virginia Council for Community  
4 and Technical College Education and the powers and duties assigned  
5 to the governing boards. To that end, the commission has the  
6 following powers and duties relating to the governing boards under  
7 its jurisdiction:

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

12 (A) The goals, objectives and priorities established in this  
13 chapter including specifically those goals, objectives and  
14 priorities pertaining to the compacts created pursuant to section  
15 seven, article one-d of this chapter; and

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

19 (2) Develop, oversee and advance the promulgation and  
20 implementation of a financing rule for state institutions of higher  
21 education under its jurisdiction. The rule shall meet the  
22 following criteria:

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

26 (B) Serve to maintain institutional assets, including, but not

1 limited to, human and physical resources and eliminating deferred  
2 maintenance; and

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

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

9 (A) Developing, building public consensus around and  
10 sustaining attention to a long-range public policy agenda. In  
11 developing the agenda, the commission and council shall seek input  
12 from the Legislature and the Governor and specifically from the  
13 state Board of Education and local school districts in order to  
14 create the necessary linkages to assure smooth, effective and  
15 seamless movement of students through the public education and  
16 post-secondary education systems and to ensure that the needs of  
17 public school courses and programs can be fulfilled by the  
18 graduates produced and the programs offered;

19 (B) Ensuring that the governing boards carry out their duty  
20 effectively to govern the individual institutions of higher  
21 education; and

22 (C) Holding the governing boards and the higher education  
23 systems as a whole accountable for accomplishing their missions and  
24 implementing their compacts;

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

1 (5) Review and adopt the annual updates of the institutional  
2 compacts;

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

4 (A) The Governor for implementation of the public policy  
5 agenda; and

6 (B) The Legislature by maintaining a close working  
7 relationship with the legislative leadership and the Legislative  
8 Oversight Commission on Education Accountability;

9 (7) Jointly with the council, promulgate legislative rules  
10 pursuant to article three-a, chapter twenty-nine-a of this code to  
11 fulfill the purposes of section five, article one-a of this  
12 chapter;

13 (8) Establish and implement a peer group for each institution  
14 as described in section three, article one-a of this chapter;

15 (9) Establish and implement the benchmarks and performance  
16 indicators necessary to measure institutional progress in achieving  
17 state policy priorities and institutional missions pursuant to  
18 section seven, article one-d of this chapter;

19 (10) Report to the Legislature and to the Legislative  
20 Oversight Commission on Education Accountability annually during  
21 the January interim meeting period on a date and at a time and  
22 location to be determined by the President of the Senate and the  
23 Speaker of the House of Delegates. The report shall address at  
24 least the following:

25 (A) The performance of its system of higher education during  
26 the previous fiscal year, including, but not limited to, progress

1 in meeting the goals, objectives and priorities set forth in  
2 section one-a, article one and article one-d of this chapter and in  
3 the commission's master plan and institutional compacts;

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

6 (C) Recommendations of the commission for statutory changes  
7 necessary or expedient to achieve state goals, objectives and  
8 priorities;

9 (11) Establish a formal process for identifying capital  
10 investment needs and for determining priorities for these  
11 investments for consideration by the Governor and the Legislature  
12 as part of the appropriation request process pursuant to article  
13 nineteen of this chapter.

14 (12) Develop standards and evaluate governing board requests  
15 for capital project financing in accordance with article nineteen  
16 of this chapter;

17 (13) Ensure that governing boards manage capital projects and  
18 facilities needs effectively, including review and approval or  
19 disapproval of capital projects, in accordance with article  
20 nineteen of this chapter.

21 (14) Acquire legal services as considered necessary, including  
22 representation of the commission, its, governing boards, employees  
23 and officers before any court or administrative body,  
24 notwithstanding any other provision of this code to the contrary.  
25 The counsel may be employed either on a salaried basis or on a  
26 reasonable fee basis. In addition, the commission may, but is not

1 required to, call upon the Attorney General for legal assistance  
2 and representation as provided by law;

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

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

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

10 (18) Advise and consent in the appointment of the presidents  
11 of the institutions of higher education under its jurisdiction  
12 pursuant to section six of this article. The role of the  
13 commission in approving an institutional president is to assure  
14 through personal interview that the person selected understands and  
15 is committed to achieving the goals, objectives and priorities set  
16 forth in the compact, in section one-a, article one and article  
17 one-d of this chapter;

18 (19) Approve the total compensation package from all sources  
19 for presidents of institutions under its jurisdiction, as proposed  
20 by the governing boards. The governing boards must obtain approval  
21 from the commission of the total compensation package both when  
22 institutional presidents are employed initially and afterward when  
23 any change is made in the amount of the total compensation package;

24 (20) Establish and implement the policy of the state to assure  
25 that parents and students have sufficient information at the  
26 earliest possible age on which to base academic decisions about



1 what is required for students to be successful in college, other  
2 post-secondary education and careers related, as far as possible,  
3 to results from current assessment tools in use in West Virginia;

4 (21) Approve and implement a uniform standard jointly with the  
5 council to determine which students shall be placed in remedial or  
6 developmental courses. The standard shall be aligned with college  
7 admission tests and assessment tools used in West Virginia and  
8 shall be applied uniformly by the governing boards throughout the  
9 public higher education system. The chancellors shall develop a  
10 clear, concise explanation of the standard which they shall  
11 communicate to the state Board of Education and the state  
12 superintendent of Schools;

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

16 (A) Expanding distance learning and technology networks to  
17 enhance teaching and learning, promote access to quality  
18 educational offerings with minimum duplication of effort; and

19 (B) Increasing the delivery of instruction to nontraditional  
20 students, to provide services to business and industry and increase  
21 the management capabilities of the higher education system.

22 (C) Notwithstanding any other provision of law or this code to  
23 the contrary, the council, commission and governing boards are not  
24 subject to the jurisdiction of the Chief Technology Officer for any  
25 purpose;

26 (23) Establish and implement policies and procedures to ensure

1 that a student may transfer and apply toward the requirements for  
2 a bachelor's degree the maximum number of credits earned at any  
3 regionally accredited in-state or out-of-state community and  
4 technical college with as few requirements to repeat courses or to  
5 incur additional costs as are consistent with sound academic  
6 policy;

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

13       (25) Establish and implement policies and procedures to ensure  
14 that a student may transfer and apply toward the requirements for  
15 a master's degree the maximum number of credits earned at any  
16 regionally accredited in-state or out-of-state higher education  
17 institution with as few requirements to repeat courses or to incur  
18 additional costs as are consistent with sound academic policy;

19       (26) Establish and implement policies and programs, in  
20 cooperation with the council and the governing boards, through  
21 which a student who has gained knowledge and skills through  
22 employment, participation in education and training at vocational  
23 schools or other education institutions, or Internet-based  
24 education programs, may demonstrate by competency-based assessment  
25 that he or she has the necessary knowledge and skills to be granted  
26 academic credit or advanced placement standing toward the

1 requirements of an associate's degree or a bachelor's degree at a  
2 state institution of higher education;

3       (27) Seek out and attend regional, national and international  
4 meetings and forums on education and workforce development-related  
5 topics as, in the commission's discretion, are critical for the  
6 performance of their duties as members, for the purpose of keeping  
7 abreast of education trends and policies to aid it in developing  
8 the policies for this state to meet the established education  
9 goals, objectives and priorities pursuant to section one-a, article  
10 one and article one-d of this chapter;

11       (28) Promulgate and implement a rule for higher education  
12 governing boards and institutions to follow when considering  
13 capital projects pursuant to article nineteen of this chapter;

14       (29) Consider and submit to the appropriate agencies of the  
15 executive and legislative branches of state government an  
16 appropriation request that reflects recommended appropriations for  
17 the commission and the governing boards under its jurisdiction.  
18 The commission shall submit as part of its appropriation request  
19 the separate recommended appropriation request it received from the  
20 council, both for the council and for the governing boards under  
21 the council's jurisdiction. The commission annually shall submit  
22 the proposed allocations based on each institution's progress  
23 toward meeting the goals of its compact;

24       (30) The commission may assess institutions under its  
25 jurisdiction, including Marshall University and West Virginia  
26 University, for the payment of expenses of the commission or for

1 the funding of statewide higher education services, obligations or  
2 initiatives related to the goals set forth for the provision of  
3 public higher education in the state;

4 (31) Promulgate rules allocating reimbursement of  
5 appropriations, if made available by the Legislature, to governing  
6 boards for qualifying noncapital expenditures incurred in providing  
7 services to students with physical, learning or severe sensory  
8 disabilities;

9 (32) Make appointments to boards and commissions where this  
10 code requires appointments from the State College System Board of  
11 Directors or the University of West Virginia System Board of  
12 Trustees which were abolished effective June 30, 2000, except in  
13 those cases where the required appointment has a specific and  
14 direct connection to the provision of community and technical  
15 college education, the appointment shall be made by the council.  
16 Notwithstanding any provisions of this code to the contrary, the  
17 commission or the council may appoint one of its own members or any  
18 other citizen of the state as its designee. The commission and  
19 council shall appoint the total number of persons in the aggregate  
20 required to be appointed by these previous governing boards;

21 (33) Pursuant to article three-a, chapter twenty-nine-a of  
22 this code and section six, article one of this chapter, promulgate  
23 rules necessary or expedient to fulfill the purposes of this  
24 chapter. The commission and the council shall promulgate a uniform  
25 joint legislative rule for the purposes of standardizing, as much  
26 as possible, the administration of personnel matters among the

1 state institutions of higher education and implementing the  
2 provisions of articles seven, eight, nine and nine-a of this  
3 chapter;

4 (34) Determine when a joint rule among the governing boards  
5 under its jurisdiction is necessary or required by law and, in  
6 those instances, in consultation with the governing boards under  
7 its jurisdiction, promulgate the joint rule;

8 (35) Promulgate and implement a rule jointly with the council  
9 whereby course credit earned at a community and technical college  
10 transfers for program credit at any other state institution of  
11 higher education and is not limited to fulfilling a general  
12 education requirement;

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

19 (A) Comparisons with peer institutions;

20 (B) Differences among institutional missions;

21 (C) Strategies for promoting student access;

22 (D) Consideration of charges to out-of-state students; and

23 (E) Such other policies as the commission and council consider  
24 appropriate;

25 (37) Implement general disease awareness initiatives to  
26 educate parents and students, particularly dormitory residents,

1 about meningococcal meningitis; the potentially life-threatening  
2 dangers of contracting the infection; behaviors and activities that  
3 can increase risks; measures that can be taken to prevent contact  
4 or infection; and potential benefits of vaccination. The  
5 commission shall encourage governing boards that provide medical  
6 care to students to provide access to the vaccine for those who  
7 wish to receive it; and

8 (38) Notwithstanding any other provision of this code to the  
9 contrary sell, lease, convey or otherwise dispose of all or part of  
10 any real property that it owns, in accordance with article nineteen  
11 of this chapter.

12 (b) In addition to the powers and duties listed in subsection  
13 (a) of this section, the commission has the following general  
14 powers and duties related to its role in developing, articulating  
15 and overseeing the implementation of the public policy agenda:

16 (1) Planning and policy leadership, including a distinct and  
17 visible role in setting the state's policy agenda and in serving as  
18 an agent of change;

19 (2) Policy analysis and research focused on issues affecting  
20 the system as a whole or a geographical region thereof;

21 (3) Development and implementation of institutional mission  
22 definitions, including use of incentive funds to influence  
23 institutional behavior in ways that are consistent with public  
24 priorities;

25 (4) Academic program review and approval for governing boards  
26 under its jurisdiction. The review and approval includes use of

1 institutional missions as a template to judge the appropriateness  
2 of both new and existing programs and the authority to implement  
3 needed changes.

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

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

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

15 (6) Administration of state and federal student aid programs  
16 under the supervision of the vice chancellor for administration,  
17 including promulgation of rules necessary to administer those  
18 programs;

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

22 (8) Developing, establishing and implementing information,  
23 assessment, accountability and personnel systems, including  
24 maintaining statewide data systems that facilitate long-term  
25 planning and accurate measurement of strategic outcomes and  
26 performance indicators;

1 (9) Jointly with the council, promulgating and implementing  
2 rules for licensing and oversight for both public and private  
3 degree-granting and nondegree-granting institutions that provide  
4 post-secondary education courses or programs in the state. The  
5 council has authority and responsibility for approval of all post-  
6 secondary courses or programs providing community and technical  
7 college education as defined in section two, article one of this  
8 chapter.

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

14 (11) Quality assurance that intersects with all other duties  
15 of the commission particularly in the areas of research, data  
16 collection and analysis, personnel administration, planning, policy  
17 analysis, program review and approval, budgeting and information  
18 and accountability systems; and

19 (12) Developing budgets and allocating resources for governing  
20 boards under its jurisdiction:

21 (A) For all governing boards under its jurisdiction, except  
22 the governing boards of Marshall University and West Virginia  
23 University, the commission shall review institutional operating  
24 budgets, review and approve capital budgets, and distribute  
25 incentive and performance-based funds;

26 (B) For the governing boards of Marshall University and West



1 Virginia University, the commission shall distribute incentive and  
2 performance-based funds and may review and comment upon the  
3 institutional operating budgets and capital budgets. The  
4 commission's comments, if any, shall be made part of the governing  
5 board's minute record.

6 (c) In addition to the powers and duties provided in  
7 subsections (a) and (b) of this section and any other powers and  
8 duties assigned to it by law, the commission has other powers and  
9 duties necessary or expedient to accomplish the purposes of this  
10 article.

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

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

18 (2) The commission has received information, substantiated by  
19 independent audit, of significant mismanagement or failure to carry  
20 out the powers and duties of the governing board according to state  
21 law; or

22 (3) Other circumstances which, in the view of the commission,  
23 severely limit the capacity of the governing board to exercise its  
24 powers or carry out its duties and responsibilities.

25 The commission may not withdraw specific powers for a period  
26 exceeding two years. During the withdrawal period, the commission

1 shall take all steps necessary to reestablish sound, stable and  
2 responsible institutional governance.

3 **§18B-1B-5. Employment of Chancellor for Higher Education; office;**  
4 **powers and duties generally; employment of Vice**  
5 **Chancellors and other staff.**

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

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

14 (1) Possesses an excellent academic and administrative  
15 background;

16 (2) Demonstrates strong communication skills;

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

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

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

22 (c) The commission shall conduct written performance  
23 evaluations of the chancellor annually and may offer the chancellor  
24 a contract not to exceed three years. At the end of each contract  
25 period, the commission shall review the evaluations and make a

1 determination by vote of its members on continuing employment and  
2 compensation level.

3 (d) When filling a vacancy in the position of chancellor, the  
4 commission shall enter into an initial employment contract for one  
5 year with the candidate selected. At the end of the initial  
6 contract period, and each contract period thereafter, the  
7 commission shall review the evaluations and make a determination by  
8 vote of its members on continuing employment and compensation level  
9 for the chancellor.

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

15 (f) The commission may employ a Vice Chancellor for Health  
16 Sciences who serves at the will and pleasure of the commission.  
17 The Vice Chancellor for Health Sciences shall coordinate the West  
18 Virginia University School of Medicine, the Marshall University  
19 School of Medicine and the West Virginia School of Osteopathic  
20 Medicine and also shall provide assistance to the governing boards  
21 on matters related to medical education and health sciences. The  
22 Vice Chancellor for Health Sciences shall perform all duties  
23 assigned by the chancellor, the commission and state law. In the  
24 case of a vacancy in the office of Vice Chancellor of Health  
25 Sciences, the duties assigned to this office by law are the  
26 responsibility of the chancellor or a designee.

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

4 (h) The commission shall employ a Vice Chancellor for Human  
5 Resources pursuant to section two-a, article four of this chapter.  
6 The person serving as senior director of human resources by the  
7 commission on January 1, 2011, is Vice Chancellor for Human  
8 Resources on the effective date of this section. Additionally, the  
9 commission shall employ a qualified generalist in the field of  
10 human resources pursuant to section two-a, article four of this  
11 chapter. The human resources generalist shall report to the Vice  
12 Chancellor for Human Resources.

13 (i) The commission may employ a Vice Chancellor for State  
14 Colleges who serves at the will and pleasure of the commission. At  
15 a minimum, the Vice Chancellor for State Colleges shall perform the  
16 following duties:

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

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

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

26 (4) Perform all duties assigned by the chancellor, the

1 commission and state law.

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

5       (j) On behalf of the commission, the chancellor may enter into  
6 agreements with any state agency or political subdivision of the  
7 state, any state institution of higher education or any other  
8 person or entity to enlist staff assistance to implement the powers  
9 and duties assigned by the commission or by state law.

10       (k) The chancellor is responsible for the daily operations of  
11 the commission and has the following responsibilities relating to  
12 the commission and the governing boards under its jurisdiction:

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

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

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

22       (4) To assist the governing boards in developing rules,  
23 subject to the provisions of section six, article one of this  
24 chapter. Nothing in this chapter requires the rules of the  
25 governing boards to be filed pursuant to the rule-making procedures  
26 provided in article three-a, chapter twenty-nine-a of this code.

1 The commission and the council, either separately or jointly as  
2 appropriate, are responsible for ensuring that any policy which is  
3 required to be uniform across the institutions is applied in a  
4 uniform manner;

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

7 (1) The chancellor shall be reimbursed for all actual and  
8 necessary expenses incurred in the performance of all assigned  
9 duties and responsibilities.

10 (m) The chancellor, with the commission, advises the  
11 Legislature on matters of higher education in West Virginia. The  
12 chancellor shall work closely with the Legislative Oversight  
13 Commission on Education Accountability and with the elected  
14 leadership of the state to ensure that they are fully informed  
15 about higher education issues and that the commission fully  
16 understands the goals, objectives and priorities for higher  
17 education that the Legislature has established by law.

18 (n) The chancellor may design and develop for consideration by  
19 the commission new statewide or region-wide initiatives in  
20 accordance with the goals set forth in section one-a, article one  
21 and article one-d of this chapter, and the public policy agenda  
22 articulated by the commission. In those instances where the  
23 initiatives to be proposed have a direct and specific impact or  
24 connection to community and technical college education as well as  
25 to baccalaureate and graduate education, the Chancellor for Higher  
26 Education and the Chancellor for Community and Technical College

1 Education shall design and develop the initiatives jointly for  
2 consideration by the commission and the council.

3 (o) To further the goals of cooperation and coordination  
4 between the commission and the state Board of Education, the  
5 chancellor serves as an ex officio, nonvoting member of the state  
6 board. The chancellor shall work closely with members of the state  
7 Board of Education and with the State Superintendent of Schools to  
8 assure that the following goals are met:

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

11 (2) Appropriate coordination of missions and programs.

12 **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

13 **§18B-2A-3. Supervision of governing boards; promulgation of rules.**

14 (a) The governing boards are subject to the supervision of the  
15 commission or the council, as appropriate, except in those  
16 instances where specific statutory exceptions are granted by law to  
17 the governing boards of Marshall University and West Virginia  
18 University. (b) The governing boards of all state institutions  
19 of higher education are subject to the provisions of law that  
20 relate to the administration of personnel matters including,  
21 specifically, articles seven, eight, nine and nine-a of this  
22 chapter and to rules promulgated and adopted in accordance with  
23 these provisions.

24 (c) The Chancellor for Higher Education and the Chancellor for  
25 Community and Technical College Education, under the supervision of  
26 their respective boards, are responsible for the coordination of

1 policies, purposes and rules of the governing boards and shall  
2 provide for and facilitate sufficient interaction among the  
3 governing boards and between the governing boards and the state  
4 Board of Education to meet the goals and objectives provided in the  
5 compacts and in section one-a, article one and article one-d of  
6 this chapter.

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

11 **§§18B-2A-4. Powers and duties of governing boards generally.**

12 Each governing board separately has the following powers and  
13 duties:

14 (a) Determine, control, supervise and manage the financial,  
15 business and education policies and affairs of the state  
16 institution of higher education under its jurisdiction;

17 (b) Develop a master plan for the institution under its  
18 jurisdiction.

19 (1) The ultimate responsibility for developing and updating  
20 each master plan at the institution resides with the governing  
21 board, but the ultimate responsibility for approving the final  
22 version of each master plan, including periodic updates, resides  
23 with the commission or council, as appropriate.

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

26 (A) A detailed demonstration of how the master plan will be



1 used to meet the goals, objectives and priorities of the compact;

2 (B) A well-developed set of goals, objectives and priorities  
3 outlining missions, degree offerings, resource requirements,  
4 physical plant needs, personnel needs, enrollment levels and other  
5 planning determinates and projections necessary in a plan to assure  
6 that the needs of the institution's area of responsibility for a  
7 quality system of higher education are addressed;

8 (C) Documentation showing how the governing board involved the  
9 commission or council, as appropriate, constituency groups,  
10 clientele of the institution and the general public in the  
11 development of all segments of the master plan.

12 (3) The plan shall be established for periods of not fewer  
13 than three nor more than five years and shall be revised  
14 periodically as necessary, including adding or deleting bachelor's,  
15 master's and doctoral degree programs for all governing boards as  
16 approved by the commission or council, respectively, except for the  
17 governing boards of Marshall University and West Virginia  
18 University only, the commission may review, but may not approve or  
19 disapprove, additions or deletions of degree programs.

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

22 (d) Prescribe for the institution, under its jurisdiction, in  
23 accordance with its master plan and compact, specific functions and  
24 responsibilities to achieve the goals, objectives and priorities  
25 established in articles one and one-d of this chapter to meet the  
26 higher education needs of its area of responsibility and to avoid

1 unnecessary duplication;

2 (e) Direct the preparation of an appropriation request for the  
3 institution under its jurisdiction, which relates directly to  
4 missions, goals and projections found in the master plan and the  
5 compact;

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

9 (g) Review, at least every five years, all academic programs  
10 offered at the institution under its jurisdiction. The review  
11 shall address the viability, adequacy and necessity of the programs  
12 in relation to established state goals, objectives and priorities,  
13 the master plan, the compact and the education and workforce needs  
14 of its responsibility district. As a part of the review, each  
15 governing board shall require the institution under its  
16 jurisdiction to conduct periodic studies of its graduates and their  
17 employers to determine placement patterns and the effectiveness of  
18 the education experience. Where appropriate, these studies should  
19 coincide with the studies required of many academic disciplines by  
20 their accrediting bodies;

21 (h) Ensure that the sequence and availability of academic  
22 programs and courses offered by the institution under its  
23 jurisdiction is such that students have the maximum opportunity to  
24 complete programs in the time frame normally associated with  
25 program completion. Each governing board is responsible to see  
26 that the needs of nontraditional college-age students are

1 appropriately addressed and, to the extent it is possible for the  
2 individual governing board to control, to assure core course work  
3 completed at the institution is transferable to any other state  
4 institution of higher education for credit with the grade earned;

5 (i) Subject to article one-b of this chapter, approve the  
6 teacher education programs offered in the institution under its  
7 control. In order to permit graduates of teacher education  
8 programs to receive a degree from a nationally accredited program  
9 and in order to prevent expensive duplication of program  
10 accreditation, the commission may select and use one nationally  
11 recognized teacher education program accreditation standard as the  
12 appropriate standard for program evaluation;

13 (j) Involve faculty, students and classified employees in  
14 institution-level planning and decisionmaking when those groups are  
15 affected;

16 (k) Subject to federal law and pursuant to articles seven,  
17 eight, nine and nine-a of this chapter and to rules adopted by the  
18 commission and the council, administer a system for the management  
19 of personnel matters, including, but not limited to, discipline for  
20 employees at the institution under its jurisdiction;

21 (l) Administer a system for hearing employee grievances and  
22 appeals. Notwithstanding any other provision of this code to the  
23 contrary, the procedure established in article two, chapter six-c  
24 of this code is the exclusive mechanism for hearing prospective  
25 employee grievances and appeals;

26 (m) Solicit and use or expend voluntary support, including

1 financial contributions and support services, for the institution  
2 under its jurisdiction;

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

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

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

10 (q) Submit to the commission or council, as appropriate, any  
11 data or reports requested by the commission or council within the  
12 time frame set by the commission or council;

13 (r) Enter into contracts or consortium agreements with the  
14 public schools, private schools or private industry to provide  
15 technical, vocational, college preparatory, remedial and customized  
16 training courses at locations either on campuses of the state  
17 institutions of higher education or at off-campus locations in the  
18 institution's responsibility district. To accomplish this goal,  
19 the boards may share resources among the various groups in the  
20 community;

21 (s) Provide and transfer funds and property to certain  
22 corporations pursuant to section ten, article twelve of this  
23 chapter;

24 (t) Delegate, with prescribed standards and limitations, the  
25 part of its power and control over the business affairs of the  
26 institution to the president in any case where it considers the

1 delegation necessary and prudent in order to enable the institution  
2 to function in a proper and expeditious manner and to meet the  
3 requirements of its master plan and compact. If a governing board  
4 elects to delegate any of its power and control under this  
5 subsection, it shall enter the delegation in the minutes of the  
6 meeting when the decision was made and shall notify the commission  
7 or council, as appropriate. Any delegation of power and control  
8 may be rescinded by the appropriate governing board, the commission  
9 or council, as appropriate, at any time, in whole or in part,  
10 except that the commission may not revoke delegations of authority  
11 made by the governing board of Marshall University or West Virginia  
12 University;

13 (u) Unless changed by the commission or the council, as  
14 appropriate, continue to abide by existing rules setting forth  
15 standards for accepting advanced placement credit for the  
16 institution under its jurisdiction. Individual departments at a  
17 state institution of higher education, with approval of the faculty  
18 senate, may require higher scores on the advanced placement test  
19 than scores designated by the governing board when the credit is to  
20 be used toward meeting a requirement of the core curriculum for a  
21 major in that department;

22 (v) Consult, cooperate and coordinate with the State Treasurer  
23 and the State Auditor to update as necessary and maintain an  
24 efficient and cost-effective system for the financial management  
25 and expenditure of appropriated and nonappropriated revenue at the  
26 institution under its jurisdiction. The system shall ensure that

1 properly submitted requests for payment are paid on or before the  
2 due date but, in any event, within fifteen days of receipt in the  
3 State Auditor's office;

4 (w) In consultation with the appropriate chancellor and the  
5 Secretary of the Department of Administration, develop, update as  
6 necessary and maintain a plan to administer a consistent method of  
7 conducting personnel transactions, including, but not limited to,  
8 hiring, dismissal, promotions, changes in salary or compensation  
9 and transfers at the institution under its jurisdiction. Each  
10 personnel transaction shall be accompanied by the appropriate  
11 standardized system or forms, as appropriate, which shall be  
12 submitted to the respective governing board and the Department of  
13 Administration:

14 (1) Not later than July 1, 2012, the Department of  
15 Administration shall make available to each governing board the  
16 option of using a standardized electronic system for these  
17 personnel transactions.

18 (2) The Secretary of the Department of Administration may  
19 suspend a governing board's participation in the standardized  
20 electronic system if he or she certifies to the Governor that the  
21 governing board has failed repeatedly and substantially to comply  
22 with the department's policies for administering the electronic  
23 system;

24 (x) Notwithstanding any other provision of this code to the  
25 contrary, transfer funds from any account specifically appropriated  
26 for its use to any corresponding line item in a general revenue

1 account at any agency or institution under its jurisdiction as long  
2 as the transferred funds are used for the purposes appropriated;

3 (y) Transfer funds from appropriated special revenue accounts  
4 for capital improvements under its jurisdiction to special revenue  
5 accounts at agencies or institutions under its jurisdiction as long  
6 as the transferred funds are used for the purposes appropriated in  
7 accordance with article nineteen of this chapter;

8 (z) Notwithstanding any other provision of this code to the  
9 contrary, acquire legal services that are necessary, including  
10 representation of the governing board, its institution, employees  
11 and officers before any court or administrative body. The counsel  
12 may be employed either on a salaried basis or on a reasonable fee  
13 basis. In addition, the governing board may, but is not required  
14 to, call upon the Attorney General for legal assistance and  
15 representation as provided by law; and

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

19 **§18B-2A-8. Additional powers and duties of governing boards.**

20 (a) The governing board of a state institution of higher  
21 education is granted the additional powers and assigned the  
22 associated duties pursuant to this section previously granted and  
23 assigned to the governing boards of Marshall University and West  
24 Virginia University, if the commission or council, as appropriate,  
25 approves granting the powers and assigning the duties to that  
26 governing board. (b) The powers and duties that may be

1 granted and assigned pursuant to this section are the following:

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

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

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

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

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

9 (c) *Additional powers and duties related to purchasing* -- The  
10 powers and duties granted and assigned to the governing boards of  
11 Marshall University and West Virginia University by section four,  
12 article five of this chapter are extended to the governing boards  
13 of all other state institutions of higher education under the  
14 following conditions:

15 (1) The commission and council shall conduct a study to  
16 determine the capacity of each governing board under their  
17 respective jurisdictions to implement the additional powers and  
18 carry out the additional assigned duties related to purchasing;

19 (2) Based upon the findings of the study, the commission and  
20 council shall approve the governing boards under their respective  
21 jurisdictions that they determine have the capacity to exercise the  
22 powers and carry out the assigned duties pursuant to section four,  
23 article five of this chapter; and

24 (3) The commission and council shall report their findings  
25 together with a list of the governing boards they each have  
26 approved to the Legislative Oversight Commission on Education



1 Accountability by December 1, 2011.

2 (d) The commission and council have the power and the duty to  
3 monitor participation and provide technical assistance, as  
4 requested or required, to governing boards under their respective  
5 jurisdictions and to limit or rescind exercise of the powers, in  
6 whole or in part, granted by this section to a governing board if,  
7 in the sole determination of the commission or council, as  
8 appropriate, that action is warranted.

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

11 **§18B-2B-3. West Virginia Council for Community and Technical**  
12 **College Education; supervision of chancellor;**  
13 **chief executive officer.**

14 (a) There is continued the West Virginia Council for Community  
15 and Technical College Education. The council has all the powers  
16 and duties assigned by law to the joint commission for vocational--  
17 technical-occupational education prior to July 1, 2001, and all  
18 other powers and duties assigned by law.

19 (b) The council shall employ a chancellor for community and  
20 technical college education. The chancellor serves as chief  
21 executive officer of the council at the will and pleasure of the  
22 council. The chancellor shall be compensated at a level set by the  
23 council not to exceed eighty percent of the average annual salary  
24 of chief executive officers of the state systems of community and  
25 technical colleges in the states that comprise the membership of

1 the Southern Regional Education Board.

2 (c) The council shall conduct written performance evaluations  
3 of the chancellor annually and may offer the chancellor a contract  
4 not to exceed three years. At the end of each contract period, the  
5 council shall review the evaluations and make a determination by  
6 vote of its members on continuing employment and level of  
7 compensation.

8 (d) When a vacancy occurs in the position of chancellor, the  
9 council shall enter into an initial employment contract for one  
10 year with the candidate selected to fill the vacancy. At the end  
11 of the initial period, and each contract period thereafter, the  
12 council shall review the evaluations and make a determination by  
13 vote of its members on continuing employment and compensation level  
14 for the chancellor.

15 (e) The individual who was serving as Vice Chancellor for  
16 Community and Technical College Education and Workforce Development  
17 and who became chancellor effective March 13, 2004, maintains all  
18 benefits of employment held, accrued and afforded as the Vice  
19 Chancellor for Community and Technical College Education and  
20 Workforce Development prior to March 13, 2004, These benefits  
21 include, but are not limited to, retirement benefits, continued  
22 membership in the same retirement system, insurance coverage and  
23 sick and annual leave. For the purposes of leave conversion  
24 established in section thirteen, article sixteen, chapter five of  
25 this code, the chancellor is not a new employee and the prohibition  
26 on conversion does not apply if the chancellor was eligible for

1 leave conversion while serving as vice chancellor.

2 **ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING BOARDS.**

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

4 (a) The Legislature finds that an effective and efficient  
5 system of doctoral-level education is vital to providing for the  
6 economic well-being of the citizens of West Virginia and for  
7 accomplishing established state goals and objectives. As the only  
8 research and doctoral-granting public universities in the state,  
9 Marshall University and West Virginia University are major assets  
10 to the citizens of West Virginia and must be an integral part of  
11 any plan to strengthen and expand the economy.

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

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

26 (d) Therefore, the purposes of this article include, but are

1 not limited to, the following:

2 (1) Enhancing the competitive position of Marshall University  
3 and West Virginia University in the current environment for  
4 research and development;

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

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

10 (4) Focusing the attention and resources of the governing  
11 boards on state goals, objectives and priorities to enhance the  
12 competitive position of the state and the economic, social and  
13 cultural well-being of its citizens; and

14 (5) Providing additional autonomy and operational flexibility  
15 and assigning certain additional responsibilities to governing  
16 boards of other state institutions of higher education.

17 (e) The governing boards of Marshall University and West  
18 Virginia University each have the power and the obligation to  
19 perform functions, tasks and duties as prescribed by law and to  
20 exercise their authority and carry out their responsibilities in a  
21 manner that is consistent with and not in conflict with the powers  
22 and duties assigned by law to the council and the commission.

23 (f) While the governing boards may choose to delegate powers  
24 and duties to their respective presidents pursuant to subsection  
25 (s), section four, article two-a of this chapter, ultimately, it is  
26 they who are accountable to the Legislature, the Governor and the

1 citizens of West Virginia for meeting the established state goals,  
2 objectives and priorities set forth in this article, and in section  
3 one-a, article one and article one-d of this chapter. Therefore,  
4 grants of operational flexibility and autonomy are made directly to  
5 the governing boards and are not grants of operational flexibility  
6 and autonomy to the president of an institution.

7 **§18B-3-3. Relationship of governing boards to the commission and**  
8 **the council.**

9 (a) *Relationship between the commission and the governing*  
10 *boards. --*

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

14 (2) The primary responsibility of the commission is to work  
15 collaboratively with the governing boards to research, develop and  
16 propose policy that will achieve the established goals, objectives,  
17 and priorities set forth in this chapter and chapter eighteen-c of  
18 this code; and

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

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

22 (B) Jointly with the council, implementing the classification  
23 and compensation system established by articles seven, eight, nine  
24 and nine-a of this chapter; and

25 (C) Collecting and analyzing data, researching, developing

1 recommendations, and advising the Legislature and the Governor on  
2 broad policy initiatives, use of incentive funding, national and  
3 regional trends in higher education and issues of resource  
4 allocation involving multiple governing boards.

5 (b) *Relationship between the council and the governing boards.*

6 -- (1) The council maintains all powers and duties assigned to it  
7 by law or rule relating to community and technical colleges as  
8 defined in section two, article one of this chapter;

9 (2) The council functions as a coordinating board for the  
10 institutions under its jurisdiction which make up the statewide  
11 network of independently-accredited community and technical  
12 colleges. In addition to recognizing the authority assigned by law  
13 to the council and abiding by rules duly promulgated by the council  
14 relating to the community and technical colleges, the governing  
15 boards shall exercise their authority and carry out their  
16 responsibilities in a manner that is consistent with and  
17 complementary to the powers and duties assigned by law or rule to  
18 the community and technical colleges or to the council;

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

23 **§18B-3-4. Duty of governing boards to address state priorities.**

24 The expertise of faculty and graduate students at state  
25 institutions of higher education is important to every citizen of  
26 this state. It is the responsibility of the governing boards to

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

10 (a) Priorities for Marshall University and West Virginia  
11 University in collaboration:

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

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

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

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

26 (c) Additional priorities for governing boards:

1 (d) In addition to the priorities established in subsection  
2 (a) of this section, each governing board under the jurisdiction of  
3 the commission shall focus resources and attention on improving its  
4 graduation rate for full-time undergraduate students as a specific  
5 institutional priority. The graduation rate is measured as a  
6 percentage of the number of undergraduate students who obtain a  
7 degree within six years of the date of enrollment as full-time  
8 freshmen.

9 (1) By July 1, 2015, the governing board of each state  
10 institution of higher education under the jurisdiction of the  
11 commission, including the governing boards of Marshall University  
12 and West Virginia University, shall attain a graduation rate for  
13 full-time undergraduate students that equals or exceeds the  
14 graduation rate of its peers established pursuant to section three,  
15 article one-a of this chapter.

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

20 **ARTICLE 4. GENERAL ADMINISTRATION.**

21 **§18B-4-1. Employment of chancellors; designation of staff;**  
22 **offices.**

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



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

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

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

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

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

25 (b) In addition to the staff positions designated in  
26 subdivision (4), subsection (a) of this section, and section five,

1 article one-b of this chapter, the Vice Chancellor for  
2 Administration, employed pursuant to section two of this article,  
3 serves the offices of the chancellors to discharge jointly the  
4 duties and responsibilities of the council and commission.

5 (c) Suitable offices for the Vice Chancellor of  
6 Administration, the Vice Chancellor for Human Resources and other  
7 staff shall be provided in Kanawha County.

8 **§18B-4-2a. Employment of vice chancellor for human resources;**  
9 **powers and duties generally; staff; office.**

10 (a) By and with the advice and consent of the council for  
11 community and technical college education, the commission shall  
12 employ a Vice Chancellor for Human Resources who may not be  
13 dismissed without the consent of the council. The person employed  
14 as senior director of human resources by the commission on January  
15 1, 2011, becomes the Vice Chancellor for Human Resources on the  
16 effective date of this section. Thereafter, any vacancy occurring  
17 in this position shall be filled in accordance with this section.

18 (b) The successful candidate for the position of vice  
19 chancellor provides vision, leadership and direction to ensure the  
20 human resources system for employees of the commission, council and  
21 governing boards is effective, efficient and aligned with industry  
22 best practices. The successful candidate possesses the following  
23 minimum qualifications:

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

26 (2) Thorough knowledge of and experience administering

1 employment laws and regulations, recruiting and selection  
2 techniques, employee relations techniques and methodologies, legal  
3 reporting and compliance requirements.

4 (c) The Vice Chancellor, in consultation with the chancellors,  
5 performs functions, tasks and responsibilities necessary to carry  
6 out the policy directives of the council and commission and any  
7 other duties prescribed by law. The Vice Chancellor oversees and  
8 monitors all issues related to the personnel system for higher  
9 education employees and provides technical support to organizations  
10 as directed or requested on all issues related to the design,  
11 development, implementation and administration of the personnel  
12 system established by this chapter and by duly promulgated rules.

13 (d) The Vice Chancellor supervises employees at the commission  
14 offices involved in human resources functions, including the  
15 professional, administrative, clerical and other employees  
16 necessary to carry out assigned powers and duties. In consultation  
17 with the Vice Chancellor for Administration and the chancellors,  
18 the Vice Chancellor shall delineate staff responsibilities as  
19 considered desirable and appropriate.

20 (e) The Vice Chancellor provides support to the chancellors  
21 and organizations on a highly diverse range of issues including  
22 assisting them to develop a culture of constant improvement in a  
23 rapidly changing, complex market. Duties of the position include,  
24 but are not limited to, the following:

25 (1) Developing and implementing business-related initiatives  
26 involving organizational design, labor cost management, executive

1 recruitment and compensation, leadership and management  
2 development, human resources data and technology, and compensation  
3 and benefits programs;

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

7 (3) Assuming responsibility for coordinating compensation and  
8 benefits programs for all employees, including designing these  
9 programs, and for supporting each higher education organization in  
10 implementing the programs;

11 (4) Maintaining consistent human resources information systems  
12 and selecting and supervising benefits consultants, brokers,  
13 trustees and necessary legal assistants;

14 (5) Maintaining the classification system by providing for  
15 regular review of jobs to determine whether the current job  
16 description accurately reflects the duties and responsibilities and  
17 whether the job is properly classified or needs to be modified or  
18 deleted. Every job shall be reviewed at least once within each  
19 five-year period;

20 (6) Ensuring that market comparison studies are conducted for  
21 each class of employees and providing a report annually to each  
22 organization on the status of relative market equity among the  
23 employee classifications.

24 (7) Carrying out the following duties related to training and  
25 development:

26 (A) Analyzing and determining training needs of organization

1 employees and formulating and developing plans, procedures and  
2 programs to meet specific training needs and problems. Successful  
3 completion of these tasks requires the vice chancellor to work  
4 closely with and communicate regularly with the training and  
5 development coordinators employed by each organization;

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

9 (C) Planning, conducting, and coordinating management  
10 inventories, appraisals, placement, counseling and training;

11 (D) Coordinating participation by all employees in training  
12 programs developed internally or provided by outside contractors;  
13 and

14 (E) Administering and analyzing an annual training and  
15 development needs survey. The survey may coincide with the  
16 completion of the annual performance review process.

17 (8) Conducting performance reviews of personnel who administer  
18 human resources functions at each organization in relation to best  
19 practices pursuant to articles seven, eight, nine and nine-a of  
20 this chapter and rules of the commission and council. Human  
21 resources personnel at each organization shall be evaluated at  
22 least once within each three-year period. The Vice Chancellor  
23 shall analyze the results of these evaluations and target training  
24 and professional development to identified areas of deficiency.

25 (f) To assist in performing the duties of vice chancellor, the  
26 commission, with the consent of the council, shall employ a

1 generalist/manager who is well qualified in the field of human  
2 resources. The position reports to the Vice Chancellor for Human  
3 resources and shall be filled on a permanent basis by September 1,  
4 2011. The successful candidate is responsible for a wide range of  
5 human resources management, reporting and development activities  
6 and works collaboratively with governing boards and their employees  
7 at all levels.

8 **ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

9 **§18B-5-9. Higher education fiscal responsibility.**

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

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

13 (A) Complying with Generally Accepted Accounting Principles of  
14 the Governmental Accounting Standards Board (GAAP); and the  
15 Generally Accepted Government Auditing Standards of the Government  
16 Accountability Office (GAGAS);

17 (B) Operating without material weakness in internal controls  
18 as defined by GAAP, GAGAS and, where applicable, the Office of  
19 Management and Budget (OMB) Circular A-133;

20 (C) Maintaining annual audited financial statements with an  
21 unqualified opinion;

22 (D) Preparing annual audited financial statements as  
23 coordinated and directed by the commission and council,  
24 respectively, and as the commission requires to complete the higher  
25 education fund audit;

26 (E) Maintaining quarterly financial statements certified by

1 the chief financial officer of the institution; and

2 (F) Implementing best practices from Sarbanes-Oxley, or  
3 adopting the applicable tenets of Sarbanes-Oxley as best practices.

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

8 (3) Within thirty days of the completion of the financial  
9 audit report, the governing boards shall furnish to the commission  
10 or council, respectively, copies of the annual audited financial  
11 statements.

12 (b) The commission and council, each, shall ensure the fiscal  
13 integrity of any electronic process conducted at its offices and by  
14 the governing boards under its respective jurisdiction by applying  
15 best business and management practices.

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

19 (d) Notwithstanding any other provision of this code to the  
20 contrary, a purchasing card may be used by the council, the  
21 commission or a governing board of a state institution of higher  
22 education to make any payment authorized by the Auditor, including  
23 regular routine payments and travel and emergency payments.  
24 Payments are set at an amount to be determined by the Auditor.

25 (1) Subject to approval of the Auditor, an emergency payment  
26 and a routine, regularly scheduled payment, including, but not

1 limited to, utility payments, contracts and real property rental  
2 fees, may exceed this limit by an amount to be determined by the  
3 Auditor.

4 (2) The council, commission and a governing board of a state  
5 institution of higher education may use a purchasing card for  
6 travel expenses directly related to the job duties of the traveling  
7 employee. Where approved by the Auditor, the expenses may exceed  
8 \$5000 by an amount to be determined by the Auditor. Traveling  
9 expenses may include registration fees and airline and other  
10 transportation reservations, if approved by the president of the  
11 institution. Traveling expenses may include purchases of fuel and  
12 food.

13 (3) The commission, council, and governing boards each shall  
14 maintain one purchasing card for use only in a situation declared  
15 an emergency by the appropriate chancellor or the institution's  
16 president. Emergencies may include, but are not limited to,  
17 partial or total destruction of a facility; loss of a critical  
18 component of utility infrastructure; heating, ventilation or air  
19 condition failure in an essential academic building; loss of campus  
20 road, parking lot or campus entrance; or a local, regional, or  
21 national emergency situation that has a direct impact on the  
22 campus.

23 (e) Notwithstanding section ten-f, article three, chapter  
24 twelve of this code, or any other provision of this code or law to  
25 the contrary, the Auditor shall accept any receiving report  
26 submitted in a format utilizing electronic media. The Auditor



1 shall conduct any audit or investigation of the council, commission  
2 or governing board at its own expense and at no cost to the  
3 council, commission or governing board.

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

- 10 (1) Bulk purchasing;
- 11 (2) Reverse bidding;
- 12 (3) Electronic marketplaces; and
- 13 (4) Electronic remitting.

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

- 18 (1) Payroll operations;
- 19 (2) Human resources operations;
- 20 (3) Warehousing operations;
- 21 (4) Financial transactions;
- 22 (5) Student financial aid application, processing and  
23 disbursement;
- 24 (6) Standard and bulk purchasing; and
- 25 (7) Any other operation or service appropriate for  
26 consolidation as determined by the council or commission.

1 (h) A governing board may charge a fee to the governing board  
2 of each institution for which it provides a service or performs an  
3 operation. The fee rate shall be in the best interest of both the  
4 institution being served and the governing board providing the  
5 service.

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

9 (j) Each governing board shall strive to minimize its number  
10 of low-enrollment sections of introductory courses. To the maximum  
11 extent practicable, governing boards shall use distance learning to  
12 consolidate the course sections. The council and commission shall  
13 report the progress of reductions as requested by the Legislative  
14 Oversight Commission on Education Accountability.

15 (k) A governing board shall use its natural resources and  
16 alternative fuel resources to the maximum extent feasible. The  
17 governing board:

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

20 (2) May supply the resources to the general public at fair  
21 market value;

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

24 (4) May develop research parks to further the purpose of this  
25 section and to expand the economic development opportunities in the  
26 state.

1 (1) Any cost-savings realized or fee procured or retained by  
2 a governing board pursuant to this section is retained by the  
3 governing board.

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

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

8 (1) The governing board makes the determination regarding any  
9 additional operation or service which is appropriate for  
10 consolidation without input from the council or commission;

11 (2) The governing board sets the fee charged to the governing  
12 board of the institution for which it provides a service or  
13 performs an operation. The fee rate shall be in the best interest  
14 of both the institution being served and the governing board  
15 providing the service and is not subject to approval by the council  
16 or commission; and

17 (3) The governing board may not implement this subdivision in  
18 a manner which supercedes the requirements established in section  
19 twelve, article three-c of this chapter.

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

24 **ARTICLE 7. PERSONNEL GENERALLY.**

25 **§18B-7-1. Legislative intent and purpose.**

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

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

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

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

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

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

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

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

20 (7) Adhering to federal and state laws;

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

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

24 (b) To accomplish these goals, the Legislature encourages  
25 organizations to pursue a human resources strategy which provides  
26 monetary and nonmonetary returns to employees in exchange for their

1 time, talents and efforts to meet articulated goals, objectives and  
2 priorities of the state, the commission and council, and the  
3 organization. The system should maximize the recruitment,  
4 motivation and retention of highly qualified employees, ensure  
5 satisfaction and engagement of employees with their jobs, ensure  
6 job performance and achieve desired results.

7 **§18B-7-2. Definitions.**

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

12 (a) "Benefits" means programs that an employer uses to  
13 supplement the cash compensation of employees and includes health  
14 and welfare plans, retirement plans, pay for time not worked and  
15 other employee perquisites.

16 (b) "Compensation" means cash provided by an employer to an  
17 employee for services rendered.

18 (c) "Compensatory time" and "compensatory time off" mean hours  
19 during which the employee is not working, which are not counted as  
20 hours worked during the applicable work week or other work period  
21 for purposes of overtime compensation and for which the employee is  
22 compensated at the employee's regular rate of pay.

23 (d) "Employee classification" or "employee class" means those  
24 employees designated as classified employees; nonclassified  
25 employees, including presidents, chief executives and top level  
26 administrators and faculty as these terms are defined in this

1 article and articles eight, nine and nine-a of this chapter.

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

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

11 (g) "Relative market status" means the calculated relationship  
12 between the average salary of each employee classification and its  
13 peer group.

14 **§18B-7-3. Seniority for full-time classified personnel; seniority**  
15 **to be observed in reducing workforce; preferred**  
16 **recall list; renewal of listing; notice of vacancies.**

17 (a) Definitions for terms used in this section have the  
18 meanings ascribed to them in section two, article one of this  
19 chapter and section two, article nine of this chapter, except that,  
20 unless clearly noted otherwise, this section applies only to an  
21 employee:

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

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

7           (b) All decisions by an organization or its agents concerning  
8 reductions in workforce of full-time classified employees, whether  
9 by temporary furlough or permanent termination, shall be made in  
10 accordance with this section.

11           (1) For layoffs by classification for reason of lack of funds  
12 or work, or abolition of position or material changes in duties or  
13 organization and for recall of employees laid off, consideration  
14 shall be given to an employee's seniority as measured by permanent  
15 employment in the service of the state system of higher education.

16           (2) If the organization desires to lay off a more senior  
17 employee, it shall demonstrate that the senior employee cannot  
18 perform any other job duties held by less senior employees of that  
19 organization in the same job class or any other equivalent or lower  
20 job class for which the senior employee is qualified. If an  
21 employee refuses to accept a position in a lower job class, the  
22 employee retains all rights of recall provided in this section.

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

26           (c) Each employee laid off during a furlough or reduction in

1 workforce is placed upon a preferred recall list and is recalled to  
2 employment by the organization on the basis of seniority.

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

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

12 (3) An employee on the preferred recall list does not forfeit  
13 the right to recall by the organization if compelling reasons  
14 require the employee to refuse an offer of reemployment by the  
15 organization.

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

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

23 (2) A position opening may not be filled by the organization,  
24 whether temporary or permanent, until all employees on the  
25 preferred recall list have been properly notified of existing  
26 vacancies and have been given an opportunity to accept



1 reemployment.

2 (e) A nonexempt classified employee is one to whom the  
3 provisions of the federal Fair Labor Standards Act, as amended,  
4 apply. A nonexempt classified employee, who applies and meets the  
5 minimum qualifications for a nonexempt job opening at the  
6 organization where currently employed, whether the job is a lateral  
7 transfer or a promotion, shall be transferred or promoted before a  
8 new person is hired.

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

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

17 (3) If more than one qualified, nonexempt classified employee  
18 applies, the best-qualified nonexempt classified employee is  
19 awarded the position. In instances where the classified employees  
20 are equally qualified, the nonexempt classified employee with the  
21 greatest amount of continuous seniority at that organization is  
22 awarded the position.

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

26 (g) Regardless of the level of seniority for an employee, for

1 the purposes of this section in the case of a reduction in force:

2 (1) An employee at an organization under the jurisdiction of  
3 the council may not displace an employee of an organization under  
4 the jurisdiction of the commission.

5 (2) An employee at an organization under the jurisdiction of  
6 the commission may not displace an employee of an organization  
7 under the jurisdiction of the council.

8 (3) An employee performing a dual service for a formerly  
9 administratively linked community and technical college and a  
10 former sponsoring institution under the jurisdiction of the  
11 commission is an employee of the institution under the jurisdiction  
12 of the commission if that institution receives a fee from the  
13 community and technical college for the service performed by the  
14 employee.

15 **§18B-7-4. Supplemental health and welfare benefit plans.**

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

19 (b) An organization may make additional periodic deductions  
20 from the salary payments due employees in the amount they are  
21 required to contribute for any supplemental health and welfare  
22 plan.

23 **§18B-7-5. Supplemental and additional retirement plans for**  
24 **employees; payroll deductions; authority to match**  
25 **employee contributions; retroactive curative and**

1                   **technical corrective action.**

2           (a) Any reference in this code to the "additional retirement  
3 plan" relating to state higher education employees, means the  
4 "higher education retirement plan" provided in this section. Any  
5 state higher education employee participating in a retirement plan  
6 upon the effective date of this section continues to participate in  
7 that plan and may not elect to participate in any other state  
8 retirement plan. Any retirement plan continues to be governed by  
9 the provisions of law applicable on the effective date of this  
10 section.

11          (b) The commission, on behalf of the council, governing boards  
12 and itself, shall contract for a retirement plan for their  
13 employees, to be known as the "Higher Education Retirement Plan".  
14 The commission, council and governing boards shall make periodic  
15 deductions from the salary payments due employees in the amount  
16 they are required to contribute to the Higher Education Retirement  
17 Plan, which deductions shall be six percent.

18          (c) The commission, council and governing boards may contract  
19 for supplemental retirement plans for any or all of their employees  
20 to supplement the benefits employees otherwise receive. The  
21 commission, council and governing boards may make additional  
22 periodic deductions from the salary payments due the employees in  
23 the amount they are required to contribute for the supplemental  
24 retirement plan.

25          (d) An organization, by way of additional compensation to  
26 their employees, shall pay an amount, which, at a minimum, equals

1 the contributions of the employees into the higher education  
2 retirement plan from funds appropriated to the commission, council  
3 or governing board for personal services.

4 (e) As part of an overall compensation plan, the commission,  
5 council or a governing board, each at its sole discretion, may  
6 increase its contributions to any employee retirement plan to an  
7 amount that exceeds the contributions of employees.

8 (f) Each participating employee has a full and immediate  
9 vested interest in the retirement and death benefits accrued from  
10 all the moneys paid into the Higher Education Retirement Plan or a  
11 supplemental retirement plan for his or her benefit. Upon proper  
12 requisition of a governing board, the commission or council, the  
13 Auditor periodically shall issue a warrant, payable as specified in  
14 the requisition, for the total contributions so withheld from the  
15 salaries of all participating employees and for the matching funds  
16 of the commission, council or governing board.

17 (g) Any person whose employment commences on or after July 1,  
18 1991, and who is eligible to participate in the Higher Education  
19 Retirement Plan, shall participate in that plan and is not eligible  
20 to participate in any other state retirement system: *Provided, That*  
21 the foregoing provision does not apply to a person designated as a  
22 21st Century Learner Fellow pursuant to section eleven, article  
23 three, chapter eighteen-a of this code. The additional retirement  
24 plan contracted for by the governing boards prior to July 1, 1991,  
25 remains in effect unless changed by the commission. Nothing in  
26 this section considers employees of the council or governing boards

1 as employees of the commission, nor is the commission responsible  
2 or liable for retirement benefits contracted by, or on behalf of,  
3 the council or governing boards.

4 **§18B-7-6. Continuing education and professional development.**

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

14 The rules shall encourage continuing education and staff  
15 development and shall require that employees be selected on a  
16 nonpartisan basis using fair and meaningful criteria which afford  
17 all employees opportunities to enhance their skills. These rules  
18 also may include reasonable provisions for the continuation or  
19 return of any faculty or classified employee receiving the benefits  
20 of the education or training, or for reimbursement by the state for  
21 expenditures incurred on behalf of the faculty member or classified  
22 employee.

23 (b) Subject to legislative appropriation therefor, the  
24 commission and council shall provide additional, regular, training  
25 and professional development for employees engaged in human  
26 resources-related activities at all organizations. The training

1 and professional development:

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

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

8 **§18B-7-7. Employment practices.**

9 (a) Each governing board, with the advice and assistance of  
10 the staff council, shall promulgate and adopt a rule regarding the  
11 role of part-time classified employees. The rule shall discourage  
12 the hiring of part-time employees solely to avoid the payment of  
13 benefits or in lieu of full-time employees and shall provide all  
14 qualified classified employees who hold nine-month or ten-month  
15 contracts with the opportunity to accept part-time or full-time  
16 summer employment before new persons are hired for the part-time or  
17 full-time employment.

18 (b) Each governing board, with the advice and assistance of  
19 the staff councils and other groups representing classified  
20 employees, shall promulgate and adopt a rule in accordance with  
21 section six, article one of this chapter that discourages  
22 temporary, nonemergency, institutionally-imposed changes in an  
23 employee's work schedule; that maintains reasonable continuity in  
24 working schedules and conditions for employees; and that requires  
25 institutions to consider feasible and innovative ways to use the  
26 institution's classified employees most efficiently. These

1 innovations may include, but are not limited to, flexibility in  
2 employee scheduling, job-sharing and four-day work weeks.

3 **§18B-7-8. Reporting.**

4 (a) *Implementation reports.* --

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

14 (1) A summary of findings generated by the human resources  
15 review conducted pursuant to section nine of this article;

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

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

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

24 (5) An assessment of progress made by the governing boards  
25 toward achieving full funding of the temporary classified  
26 employees' salary schedule pursuant to section three, article nine

1 of this chapter;

2       (6) Detailed data disaggregated by organization and employee  
3 category or classification, comparing funding for salaries of  
4 faculty, classified employees and nonclassified employees as a  
5 percentage of the average funding for each of these classes or  
6 categories of employees among the organization's peers, in regional  
7 or national markets, as appropriate, and among similar  
8 organizations within the state systems of public higher education;  
9 and

10       (7) Other data requested by the Legislature or considered  
11 appropriate by the commission or council.

12       (b) *Annual personnel reports.* --

13       (1) No later than December 1, 2013, and annually thereafter,  
14 the commission and council shall report to the Legislative  
15 Oversight Commission on Education Accountability addressing the  
16 following issues:

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

20       (B) Detailed data disaggregated by organization and employee  
21 category or classification, comparing funding for salaries of  
22 faculty, classified employees and nonclassified employees as a  
23 percentage of the average funding for each of these classes or  
24 categories of employees among the organization's peers, in the  
25 state, region or national markets, as appropriate, and among  
26 similar organizations within the state systems of public higher



1 education.

2 (2) The commission and council shall prepare a human resources  
3 report card summarizing the performance of organizations on key  
4 human resources measures. The report card shall be presented to  
5 the Legislative Oversight Commission on Education Accountability no  
6 later than December 1, 2012, and annually thereafter, and shall be  
7 made available to the general public. At a minimum, the human  
8 resources report card shall contain the following data:

9 (A) Human resources department metrics by organization:

10 (i) Number of human resources staff;

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

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

15 (iv) Number of positions reporting to the head of human  
16 resources;

17 (v) Areas of human resources functions outsourced to external  
18 entities;

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

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

21 (B) Human resources expense data:

22 (i) Ratio of human resources expenses to operating expenses;

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

25 (iii) Total human resources expense per organization employee.

26 (C) Compensation data:

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

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

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

7 (D) System metrics:

8 (i) Comparisons of faculty salaries at each organization to  
9 market averages;

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

12 (E) An account of the total amount, type of training or  
13 professional development provided, the number of employees who  
14 participated and the overall cost of the training and professional  
15 development provided to employees pursuant to section six of this  
16 article; and

17 (F) Other measures the commission or council considers  
18 appropriate to assist policymakers in evaluating the degree of  
19 success in implementing best human resources practices by higher  
20 education organizations.

21 (c) *Job classification system report.* --

22 By July 1, 2014, and at least once within each five-year  
23 period thereafter, the commission and council jointly shall review  
24 the effectiveness of the system for classifying jobs and submit an  
25 in-depth report to the Legislative Oversight Commission on  
26 Education Accountability. The report shall include, but is not

1 limited to, findings, recommendations and supporting documentation  
2 regarding the following job classification issues:

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

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

8 (d) It is the responsibility of the head of human resources  
9 for each organization to prepare and submit to the president or  
10 chief executive officer all human resources data requested by the  
11 commission and council. The president or executive officer of each  
12 organization shall submit the requested data at times established  
13 by the commission and council.

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

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

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

25 **§18B-7-9. Human resources reviews.**

26 (a) The commission and council jointly shall conduct an

1 initial human resources review of each organization to be carried  
2 out, subject to legislative appropriation, by an external vendor  
3 possessing experience and expertise in conducting these reviews.  
4 The initial review shall be completed by October 1, 2011, and shall  
5 be designed to compare current human resources practices at each  
6 organization to best practices, to identify areas of strength or  
7 deficiency, to identify functions that should be the responsibility  
8 of the human resources department, but are incorrectly assigned or  
9 carried out by other offices within each organization, to assist in  
10 targeting employee training and development, to determine the  
11 degree to which organizations are adhering to state and federal  
12 laws related to human resources administration and to provide data  
13 necessary to guide policymakers in developing personnel rules and  
14 implementing the classification and compensation system.

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

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

24 (2) In the absence of special circumstances, the commission  
25 and council shall provide organizations with reasonable notice  
26 prior to conducting a human resources review and shall identify the

1 subjects to be examined in the review.

2 **§18B-7-10. Compensatory time off in lieu of overtime; written**  
3 **agreement; other conditions.**

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

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

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

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

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

1 compensatory time, the compensation shall be paid at the regular  
2 rate earned by the employee at the time the employee received the  
3 payment.

4 (c) If employment is terminated, an employee who has accrued  
5 compensatory time pursuant to this section, shall be paid for the  
6 unused compensatory time at a rate of compensation not less than  
7 the higher amount calculated using one of the following formulas:

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

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

11 (d) An employee who has accrued compensatory time as  
12 authorized by this section, and who has requested the use of  
13 compensatory time, shall be permitted by the employer to use this  
14 time within a reasonable period after making the request if the use  
15 of the compensatory time does not unduly disrupt the operation of  
16 the employing agency. Compensatory time must be used within one  
17 year from the time it is accrued.

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

20 (a) Notwithstanding any provision of this code to the  
21 contrary, by July 1, 2015, the percentage of personnel placed in  
22 the category of "nonclassified" at a higher education organization  
23 may not exceed twenty percent of the total number of classified and  
24 nonclassified employees of that organization as those terms are  
25 defined in section two, article nine-a of this chapter and who are  
26 eligible for membership in a state retirement system of the State

1 of West Virginia or other retirement plan authorized by the state.

2 A higher education organization which has more than twenty  
3 percent of its employees placed in the nonclassified category as  
4 defined by this subsection on July 1, 2011, shall reduce the number  
5 of nonclassified employees to no more than twenty-five percent by  
6 July 1, 2013, and to no more than twenty percent by July 1, 2015,  
7 except as set forth in subsections (b) and (c) of this section.

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

10 (1) Employees of the commission and the chancellor for higher  
11 education and employees of the council and the chancellor for  
12 community and technical college education are considered as one  
13 organization;

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

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

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

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

5 (2) In the case of personnel employed by the commission and  
6 the council, the chancellors jointly shall agree to increase the  
7 percentage number or fraction of a number of nonclassified  
8 employees beyond twenty percent and shall recommend this action to  
9 their respective boards for approval.

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

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

17 (3) *Powers and duties of Commission and Council regarding*  
18 *nonclassified staff ratios. --*

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

23 (B) The commission and council shall provide technical  
24 assistance to organizations under their respective jurisdictions in  
25 collecting and interpreting data to ensure that they fulfill the  
26 requirements established by this section. Consideration of these



1 issues shall be made part of each review required by section nine  
2 of this article and information from the review included in the  
3 reports required by subsections (a) and (b), section eight of this  
4 article;

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

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

18 (d) The current annual salary of a nonclassified employee may  
19 not be reduced if his or her position is redefined as a classified  
20 position solely to meet the requirements of this section. If such  
21 a nonclassified employee is reclassified, his or her salary does  
22 not constitute evidence of inequitable compensation in comparison  
23 to other employees in the same paygrade.

24 **§18B-7-12. Additional employment by mutual agreement; agreement**  
25 **to be filed with governing board.**

26 In accordance with duly promulgated rules of the governing

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

12 **§18B-7-13. Probationary employment period; evaluation.**

13 Each full-time classified employee hired by an organization  
14 shall serve an initial probationary period of six months. At the  
15 end of the probationary period, the employee shall receive a  
16 written evaluation of his or her performance. The employee's  
17 supervisor shall meet with the employee and explain the contents of  
18 the evaluation and whether the employee is being offered regular  
19 employment.

20 **§18B-7-14. Higher education employees' catastrophic leave bank  
21 and leave transfer.**

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

24 (1) A classified or nonclassified employee who is employed by  
25 a higher education governing board, by the commission or by the

1 council; or

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

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

14 (c) For the purpose of this section, a catastrophic illness or  
15 injury is one that is expected to incapacitate the employee and  
16 create a financial hardship because the employee has exhausted all  
17 sick and annual leave and other paid time off. Catastrophic  
18 illness or injury also includes an incapacitated immediate family  
19 member as defined by a governing board, the commission or the  
20 council, as appropriate, if this results in the employee being  
21 required to take time off from work for an extended period of time  
22 to care for the family member and if the employee has exhausted all  
23 sick and annual leave and other paid time off.

24 (d) A leave bank or banks may be established at each state  
25 institution of higher education, the commission or the council to  
26 which employees may donate either sick or annual leave. The bank

1 or banks may be established jointly by the policy commission and  
2 the governing boards or may be established for the commission, the  
3 council, and each of the governing boards. Sick or annual leave  
4 may be deposited in the leave bank, and shall be reflected as a  
5 day-for-day deduction from the sick or annual leave balance of the  
6 depositing employee.

7       Donated leave may be withdrawn by any employee experiencing a  
8 catastrophic illness or injury when the following conditions are  
9 met:

10       (1) The president of the institution or the chancellor of the  
11 commission or the council, as appropriate, verifies that the  
12 employee is unable to work due to the catastrophic illness or  
13 injury; and

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

17       The withdrawal shall be reflected as a day-for-day addition to  
18 the leave balance of the withdrawing employee.

19       (e) Sick or annual leave may be donated to an employee  
20 experiencing a catastrophic illness or injury. The leave shall be  
21 donated at the request of the employee after appropriate  
22 verification that the employee is unable to work due to the  
23 catastrophic illness or injury as determined by the president of  
24 the institution or the appropriate chancellor. When transfer of  
25 sick or annual leave is approved by the president of the  
26 institution or the appropriate chancellor, any employee may donate

1 sick or annual leave in one-day increments by providing written  
2 notice to the personnel office. Donations shall be reflected as a  
3 day-for-day deduction from the sick or annual leave balance of the  
4 donating employee. An employee receiving the donated sick or  
5 annual leave shall have any time which is donated credited to his  
6 or her account in one-day increments and reflected as a day-for-day  
7 addition to the leave balance of the receiving employee.

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

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

16 (2) An employee withdrawing or receiving donations of sick or  
17 annual leave pursuant to this section shall use any leave  
18 personally accrued on a monthly basis prior to receiving additional  
19 donated sick or annual leave.

20 (g) Donated sick or annual leave deposited in an institutional  
21 leave bank or transferred under subsection (d) of this section may  
22 be inter-institutional in accordance with the policies of the  
23 appropriate governing board. Each institution, the commission or  
24 the council is responsible for the administration of the sick or  
25 annual leave deposits, withdrawals and transfers of its employees.  
26 Rules implementing the provisions of this section may be adopted

1 jointly or separately by the governing boards, the commission or  
2 the council in accordance with section six, article one of this  
3 chapter and, in the case of the commission and council, in  
4 accordance with article three-a, chapter twenty-nine-a of this  
5 code.

6 **§18B-7-15. Merit increases.**

7 Higher education organizations may grant merit increases which  
8 are in accordance with this article and articles eight, nine and  
9 nine-a of this chapter and with duly promulgated rules of the  
10 commission and council.

11 **§18B-7-16. Study of employment practices.**

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

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

19 (2) Determining the advantages and disadvantages of  
20 maintaining the internal preferences for hiring, promoting and  
21 transferring classified employees;

22 (3) Collecting and analyzing data and developing  
23 recommendations on the advantages and disadvantages of outsourcing  
24 certain functions at the organization level. The data shall  
25 include, but are not limited to, the following items:

26 (A) A current database of outsourcing practices followed by

1 each organization including procedures or rules developed to inform  
2 policy decisions;

3 (B) The total number, disaggregated by organization, of  
4 positions or services being outsourced or filled by temporary  
5 employees;

6 (C) The amount of actual cost savings, if any, that are  
7 realized or may be realized as a direct result of organizations'  
8 outsourcing decisions;

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

13 (b) The commission and council shall complete the work and  
14 report their findings, conclusions and recommendations, together  
15 with drafts of any legislation necessary to effectuate the  
16 recommendations, to the Legislative Oversight Commission on  
17 Education Accountability no later than January 1, 2012.

18 **ARTICLE 8. HIGHER EDUCATION FACULTY.**

19 **§18B-8-1. Definitions.**

20 As used in this article:

21 (a) "Academic rank", "rank" or "faculty rank" means the  
22 position held by a faculty member as determined by the president,  
23 consistent with a rule promulgated and adopted by the governing  
24 board, and includes the positions of professor, associate  
25 professor, assistant professor and instructor. All other ranks are  
26 excluded from the provisions of this article.

1 (b) "Salary" means the total nine-month or ten-month salary  
2 paid from state funds to a full-time faculty member, or if the  
3 employment period is other than nine or ten months, the total  
4 salary adjusted to a nine-month base salary;

5 (c) "Full-time faculty" means a faculty member so designated  
6 by the president, consistent with the duly promulgated and adopted  
7 rule of the appropriate governing board, and those persons with  
8 faculty rank who have research or administrative responsibilities.

9 **§18B-8-2. Faculty salary rules; salary increase upon promotion in**  
10 **rank.**

11 (a) Each governing board shall promulgate and adopt a faculty  
12 salary rule in accordance with section six, article one of this  
13 chapter which furthers the goals of attracting, retaining and  
14 rewarding high quality faculty. Faculty salary increases shall be  
15 distributed within each organization in accordance with the faculty  
16 salary rule.

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

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

20 (1) The salary of each full-time faculty member within a  
21 discipline group is competitive with those in similar disciplines  
22 at peer institutions;

23 (2) Faculty are recognized for outstanding performance;

24 (3) Equity among salaries is maintained; and

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



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

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

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

25 **§18B-8-4. Effect of leave of absence on academic tenure, rank,**  
26 **etc.**

1 (a) Notwithstanding any provision of law to the contrary, a  
2 tenured professional at a state institution of higher education who  
3 is absent from duties at the institution to accept employment in a  
4 nonelected governmental capacity is afforded the benefits of  
5 academic tenure, rank and position as if he or she had remained  
6 continuously in the position retained and held at the institution  
7 immediately preceding the absence if the following conditions are  
8 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 the  
15 absence in writing each year and the board approves each request up  
16 to eight full years.

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

22 **§18B-8-5. Notice to probationary faculty members of retention or**  
23 **nonretention; hearing.**

24 (a) For the purposes of this section, "Probationary faculty  
25 member" means the definition adopted in a joint rule promulgated by  
26 the commission and council. The rights provided to probationary

1 faculty members by this section are in addition to, and not in lieu  
2 of, other rights afforded to them by other rules and other  
3 provisions of law.

4 (b) The president of each state institution of higher  
5 education shall give written notice concerning retention or  
6 nonretention for the ensuing academic year to a probationary  
7 faculty member not later than March 1.

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

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

20 Each governing board, with the advice and assistance of the  
21 faculty senate, shall promulgate and adopt a rule in accordance  
22 with section six, article one of this chapter addressing the  
23 following issues:

24 (a) Defining an appropriate balance between full-time and  
25 adjunct faculty members and the appropriate role of adjunct  
26 faculty; and

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

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

7 **§18B-9-1. Legislative purpose and intent.**

8 (a) The purpose of the Legislature in enacting this article is  
9 to require the commission and council jointly to implement,  
10 control, supervise and manage a complete, uniform system of  
11 personnel classification and compensation in accordance with the  
12 provisions of this article for classified employees at higher  
13 education organizations.

14 (b) It is the intent of the Legislature to require each higher  
15 education organization to achieve full funding of the salary  
16 schedule established in section three of this article. A higher  
17 education organization, as defined in section two, article nine-a  
18 of this chapter, is subject to the provisions of this article until  
19 full funding is reached.

20 (c) It is further the intent of the Legislature to encourage  
21 strongly that each organization dedicate a portion of future  
22 tuition increases to fund the classified salary schedule and, after  
23 full funding of the salary schedule is achieved, to move toward  
24 meeting salary goals for faculty, classified and nonclassified  
25 employees.

1 **§18B-9-2. Definitions.**

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

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

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

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

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

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

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

1 organization employee;

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

4 (h) "Years of experience" means the number of years a person  
5 has been an employee of the State of West Virginia and refers to  
6 the horizontal column heading of the salary schedule established in  
7 section three of this article. For the purpose of placement on the  
8 salary schedule, employment for nine months or more equals one year  
9 of experience, but a classified employee may not accrue more than  
10 one year of experience during any given fiscal year. Employment  
11 for less than full time or for fewer than nine months during any  
12 fiscal year shall be prorated. In accordance with rules  
13 established by the commission and council jointly, a classified  
14 employee may be granted additional years of experience not to  
15 exceed the actual number of years of prior, relevant work or  
16 experience at accredited institutions of higher education other  
17 than state institutions of higher education.

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

20 (a) There is hereby continued a temporary state annual salary  
21 schedule for classified employees consisting of a minimum annual  
22 salary for each pay grade in accordance with years of experience.  
23 Nothing in this article guarantees payment to a classified employee  
24 of the salary indicated on the schedule at the actual years of  
25 experience. The minimum salary herein indicated shall be prorated  
26 for classified employees working fewer than thirty-seven and one-

1 half hours per week. For the purposes of this article and article  
2 nine-a, despite any differences in salaries that may occur, a  
3 classified employee is equitably compensated in relation to other  
4 classified employees in the same pay grade if the following  
5 conditions exist:

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

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

12 (b) Nothing in this section requires an appropriation by the  
13 Legislature in excess of the legislative funding priorities as set  
14 forth in this chapter.

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

25 (1) Classified salary increases distributed within the  
26 organization shall be provided in accordance with the uniform

1 classification and compensation system established by this article  
2 and rules of the commission and council and shall be applied toward  
3 achieving full funding of the temporary salary schedule; and

4       (2) An organization may not provide discretionary salary  
5 increases, including merit or performance-based increases, to the  
6 president or chief executive officer of an organization or to any  
7 group or class of employees within the organization, other than  
8 classified employees, unless the organization has achieved full  
9 funding of the salary schedule established in this section or is  
10 making appropriate progress toward achieving full funding of the  
11 salary schedule.

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

14       (B) For the purposes of subdivision (2) of this subsection,  
15 "appropriate progress" has the following meanings:

16       (i) For governing boards under the jurisdiction of the  
17 commission, appropriate progress means an organization has funded  
18 at least twenty-five percent of the amount needed to reach full  
19 funding of the salary schedule by July 1, 2012 as calculated  
20 pursuant to this subsection; has funded at least fifty percent of  
21 the calculated amount by July 1, 2013; has funded at least seventy-  
22 five percent of the calculated amount by July 1, 2014 and has  
23 funded one hundred percent of the calculated amount by July 1,  
24 2015; and

25       (ii) For governing boards under the jurisdiction of the  
26 council, appropriate progress means an organization has funded at



1 least twenty-five percent of the amount needed to reach full  
 2 funding of the salary schedule by July 1, 2013 as calculated  
 3 pursuant to this subsection; has funded at least fifty percent of  
 4 the calculated amount by July 1, 2014; has funded at least seventy-  
 5 five percent of the calculated amount by July 1, 2015 and has  
 6 funded one hundred percent of the calculated amount by July 1,  
 7 2016.

8 **TEMPORARY HIGHER EDUCATION CLASSIFIED EMPLOYEE**

9 **ANNUAL SALARY SCHEDULE**

10 **YEARS OF EXPERIENCE**

11	PAY	0	1	2	3	4	5	6	7	8
12	GRADE									
13										
14	1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900	15,221
15	2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687	16,036
16	3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546	16,925
17	4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478	17,872
18	5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469	18,906
19	6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547	20,013
20	7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697	21,192
21	8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950	22,489
22	9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290	23,887
23	10	19,916	20,421	20,938	21,484	22,029	22,602	23,176	23,763	24,379
24	11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288	25,945
25	12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924	27,638
26	13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701	29,470
27	14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631	31,470
28	15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715	33,624
29	16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981	35,974
30	17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456	38,519
31	18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142	41,303
32	19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064	47,410
33	20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460	50,941
34	21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170	54,786
35	22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224	58,975
36	23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653	63,568
37	24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485	68,579
38	25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781	74,070

39

40 **PAY** 9 10 11 12 13 14 15

41 **GRADE**

1								
2	1	15,541	15,876	16,226	16,575	16,939	17,304	17,682
3	2	16,386	16,750	17,129	17,507	17,886	18,294	18,687
4	3	17,304	17,697	18,090	18,498	18,920	19,343	19,780
5	4	18,279	18,702	19,139	19,576	20,027	20,493	20,959
6	5	19,343	19,794	20,260	20,741	21,222	21,717	22,227
7	6	20,479	20,974	21,469	21,994	22,518	23,057	23,596
8	7	21,717	22,241	22,780	23,334	23,902	24,484	25,081
9	8	23,042	23,610	24,193	24,805	25,416	26,043	26,684
10	9	24,484	25,096	25,737	26,378	27,048	27,732	28,417
11	10	25,008	25,638	26,295	26,980	27,666	28,379	29,106
12	11	26,617	27,316	28,015	28,757	29,498	30,267	31,064
13	12	28,365	29,120	29,890	30,687	31,498	32,323	33,176
14	13	30,267	31,078	31,918	32,771	33,652	34,561	35,484
15	14	32,323	33,204	34,114	35,051	36,002	36,981	38,002
16	15	34,561	35,512	36,505	37,512	38,547	39,624	40,715
17	16	36,981	38,030	39,093	40,198	41,331	42,492	43,694
18	17	39,624	40,757	41,918	43,121	44,352	45,611	46,925
19	18	42,506	43,736	44,995	46,296	47,639	49,023	50,450
20	19	48,801	50,238	51,719	53,230	54,801	56,416	58,062
21	20	52,452	54,023	55,623	57,284	58,990	60,755	62,550
22	21	56,431	58,137	59,902	61,712	63,568	65,482	67,472
23	22	60,785	62,640	64,555	66,530	68,579	70,674	72,828
24	23	65,527	67,562	69,656	71,826	74,040	76,344	78,708
25	24	70,734	72,948	75,237	77,601	80,039	82,552	85,156
26	25	76,419	78,842	81,356	83,944	86,607	89,360	92,202

27 **§18B-9-4. Classified employee salary; payment beyond salary**  
28 **schedule; conditions.**

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

32 (b) Nothing in this article prohibits promotion of a  
33 classified employee to a job title carrying a higher pay grade if  
34 the promotion is in accordance with the provisions of this article,  
35 the personnel classification and compensation system and personnel  
36 rules of the commission and council.

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

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

3 (2) The governing board has promulgated and adopted a salary  
4 rule in accordance with section six, article one of this chapter  
5 and the rules of the commission and council establishing a  
6 procedure to ensure that salary increases above the temporary  
7 salary schedule are distributed equitably and in a manner that is  
8 consistent with the uniform classification and compensation system.

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

10 **§18B-9A-1. Legislative intent and purpose.**

11 (a) The intent of the Legislature in enacting this article is  
12 to establish the classification and compensation system for certain  
13 employees of higher education organizations and apply recognized  
14 best human resources practices in order to use available resources  
15 in the most effective and efficient manner for the benefit of the  
16 citizens of West Virginia.

17 It is further the intent of the Legislature to establish a  
18 plan that is fair, accountable, credible, transparent and  
19 systematic. In recognition of the importance of these qualities,  
20 this article, together with articles seven, eight and nine of this  
21 chapter, is designated and may be cited as "FACTs for Higher  
22 Education".

23 (b) In furtherance of the principles described in subsection  
24 (a) of this section, the chief purposes of the classification and  
25 compensation system are to accomplish the following objectives:

26 (1) Develop and implement a classification and compensation

1 system that is fair, transparent, understandable, simple to  
2 administer, self-regulating and adaptable to meet future goals and  
3 priorities;

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

7 (3) Attract well-qualified and diverse job applicants and  
8 retain and motivate employees to accomplish the goals, objectives  
9 and priorities identified in state law, rules of the commission and  
10 council, the statewide master plans for higher education and the  
11 institutions' compacts;

12 (4) Retain and reward employees who make valuable  
13 contributions to state and organization goals, objectives and  
14 priorities;

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

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

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

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

25 (9) Ensure that regular market salary analyses are performed  
26 to determine how organization compensation for all classes of

1 employees compares to compensation in relevant external markets.

2 **§18B-9A-2. Definitions.**

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

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

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

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

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

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

22 (f) "Job family" means a group of jobs having the same nature  
23 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 or

1 more individuals whose positions have the same nature of work  
2 performed at the same level.

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

5 (i) "Nonclassified employee" means an employee of an  
6 organization who holds a position that is not assigned a particular  
7 job and job title within the classification system established by  
8 this article, article nine, and by duly promulgated and adopted  
9 rules of the commission and council and who meets one or more of  
10 the following criteria:

11 (1) Holds a direct policy-making position at the department or  
12 organization level; or

13 (2) Reports directly to the president or chief executive  
14 officer of the organization.

15 (j) "Organization" means the commission, the council, an  
16 agency or entity under the respective jurisdiction of the  
17 commission or the council or a state institution of higher  
18 education as defined in section two, article one of this chapter.

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

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

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

1 (n) "Position information questionnaire" or "PIQ" means a tool  
2 used in the creation and evaluation of position descriptions and  
3 includes the factors of knowledge, experience, complexity and  
4 problem solving, freedom of action, scope and effect, breadth of  
5 responsibility, intra-systems contacts, external contacts, direct  
6 supervision of personnel, indirect supervision of personnel and  
7 health, safety and physical considerations.

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

10 **§18B-9A-3. Applicability.**

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

15 (b) Until the commission or council, as appropriate, has  
16 certified that an organization has achieved full funding of the  
17 temporary classified employee annual salary schedule or is making  
18 appropriate progress toward attaining full funding as defined by  
19 section three, article nine of this chapter, the organization is  
20 subject to article nine of this chapter and may not exercise  
21 flexibility provisions in any area of human resources identified in  
22 this chapter or in commission and council rule.

23 **§18B-9A-4. Job classification system; job classification committee**  
24 **established; membership; meetings; powers and duties.**

25 (a) The commission and council jointly shall maintain a

1 uniform system for classifying jobs and positions of organization  
2 employees.

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

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

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

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

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

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

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



- 1 (1) Modifying and deleting jobs and assigning job titles;
- 2 (2) Reviewing and revising job titles to make them consistent  
3 among organizations, including adopting consistent title  
4 abbreviations;
- 5 (3) Establishing job worth hierarchies and data lines for each  
6 job title;
- 7 (4) Classifying jobs, establishing proper pay grades and  
8 placing jobs in pay grades consistent with the job evaluation plan;
- 9 (5) Determining when new job titles are needed and creating  
10 new job titles within the system;
- 11 (6) Recommending base pay enhancements for jobs for which the  
12 application of point factor methodology produces significantly  
13 lower salaries than external market pricing. The committee may  
14 exercise this authority only if it reevaluates each job annually to  
15 make a determination whether the enhancement should be continued;
- 16 (7) Recommending a procedure for performing job family  
17 reviews;
- 18 (8) Determining appropriate career ladders within the  
19 classification system and establishing criteria for career  
20 progression; and
- 21 (9) Hearing job classification appeals prior to commencement  
22 of the formal grievance process pursuant to commission and council  
23 rule.
- 24 (d) The committee shall meet monthly if there is business to  
25 conduct and also may meet more frequently at the call of the chair.  
26 A majority of the voting members serving on the committee at a

1 given time constitutes a quorum for the purpose of conducting  
2 business.

3 (e) When evaluating jobs, the committee shall use the  
4 following procedure:

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

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

9 (3) After discussing the issues and resolving differences, the  
10 committee shall make a determination of the appropriate  
11 classification for each job.

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

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

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

23 **§18B-9A-5. Compensation planning and review committee established;**  
24 **membership; meetings; powers and duties.**

25 (a) Pursuant to the rule authorized in section seven of this  
26 article, the commission and council jointly shall establish and

1 maintain a compensation planning and review committee.

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

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

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

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

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

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

25 (c) The committee shall meet at least quarterly and at other  
26 times at the call of the chair. A majority of the voting members

1 serving on the committee at a given time constitutes a quorum for  
2 the purpose of conducting business.

3 (d) An institution may not have a majority of the committee  
4 members and the combined membership representing various groups or  
5 divisions within or affiliated with an organization in total may  
6 not constitute a majority of the membership.

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

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

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

13 (3) Overseeing the annual internal market review;

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

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

25 (f) The commission and council may allow the committee to  
26 collapse the three lowest pay grades into a single pay grade and

1 provide for employees to be paid at rates appropriate to the  
2 highest of the three lowest pay grades.

3 **§18B-9A-6. Salary structure and salary schedules.**

4 (a) The commission and council shall develop and maintain a  
5 market salary structure and minimum salary schedules and ensure  
6 that all organizations under their respective jurisdictions adhere  
7 to state and federal laws and duly promulgated and adopted  
8 organization rules.

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

- 12 (1) Approval of a classification and compensation rule;
- 13 (2) Approval of the job evaluation plan;
- 14 (3) Approval of the annual market salary schedule; and
- 15 (4) Approval of the annual minimum salary schedule.

16 (c) The market salary structure serves as the basis for the  
17 following activities:

- 18 (1) Evaluating compensation of classified employees in  
19 relation to appropriate external markets; and
- 20 (2) Developing the minimum salary schedules to be adopted by  
21 the commission and council.

22 (d) The market salary structure shall meet the following  
23 criteria:

- 24 (1) Sets forth the number of pay grades and steps to be  
25 included in the structure;
- 26 (2) Includes a midpoint value for each pay grade which

1 represents the average salary of jobs in that pay grade. The  
2 commission and council may choose a midpoint value that is not  
3 based exclusively on market salary data; and

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

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

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

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

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

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

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

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

5 (1) The minimum salary floor for each pay grade and step on  
6 the minimum salary schedule is determined by applying the  
7 percentage fixed by commission and council rule promulgated  
8 pursuant to section seven of this article to the annual market  
9 salary data. The commission and council also shall consider the  
10 minimum wage and other laws that ensure that employees earn a  
11 living wage and shall maintain a salary structure which ensures  
12 that the average salary of each class of employees meets relative  
13 market equity among employee classes. The commission and council  
14 may take into consideration other factors they consider  
15 appropriate.

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

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

21 **§18B-9A-7. Classification and compensation rules required;**  
22 **emergency rule authorized.**

23 (a) Notwithstanding any provision of law or rule to the  
24 contrary, the commission and council jointly shall design, develop,  
25 implement and administer the personnel system of classification and  
26 compensation pursuant to this article and articles seven, eight and

1 nine of this chapter. In developing and designing the system, they  
2 shall give careful consideration to the recommendations and  
3 supporting documentation contained in the *Final Report to the*  
4 *Select Committee on Higher Education Personnel*, prepared pursuant  
5 to section thirteen, article one-b of this chapter, which was  
6 received and approved by the Select Committee on January 11, 2010.

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

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

19 (1) *Organization accountability.* --

20 The system rule shall provide a procedure for correcting  
21 deficiencies identified in the human resources reviews conducted  
22 pursuant to section nine, article seven of this chapter. The  
23 procedure shall include, but is not limited to, the following  
24 components:

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



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

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

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

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

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

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

23 (II) Other sanctions may include, but are not limited to,  
24 suspending new hiring by the organization and prohibiting  
25 compensation increases for key administrators who have authority  
26 over the areas of major deficiency until the identified

1 deficiencies are corrected.

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

6 (2) *Employee classification and compensation.* -- The system  
7 rule shall establish a classification and compensation system to  
8 accomplish the following objectives:

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

13 (B) Achieving and maintaining appropriate levels of employee  
14 dispersion across steps;

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

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

26 (E) Establishing an objective standard to be used in

1 determining when a job description or a position description is up-  
2 to-date;

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

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

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

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

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

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

6           (c) *Emergency rule.* --

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

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

18           (d) *Organization rules.* --

19           (1) Each organization shall promulgate and adopt a rule or  
20 rules in accordance with the provisions of section six, article one  
21 of this chapter to implement requirements contained in the  
22 classification and compensation system rule or rules of the  
23 commission and council. The commission and council shall provide  
24 a model personnel rule for the organizations under their  
25 jurisdiction and shall provide technical assistance in rulemaking  
26 as requested.

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

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

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

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

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

26           (B) Promulgates a comprehensive classification and

1 compensation rule as required by this section;

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

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

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

17 **§18B-9A-8. Implementation of classification and compensation**  
18 **system.**

19 (a) Sweeping cultural changes are needed to implement the  
20 recommendations of the Select Committee on Higher Education  
21 Personnel and the provisions of this article and articles seven,  
22 eight and nine of this code. These kinds of changes require  
23 dedication and cooperation from all employee classes across the two  
24 systems of public higher education, the commission, council and  
25 state policymakers. The primary responsibility for implementation,  
26 however, rests with the commission and the council who shall

1 provide leadership and assistance to the human resources  
2 professionals within each organization to bring about the changes  
3 successfully.

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

7 (1) Communicating with organization employees and  
8 administrators to acquaint them with the guiding principles of the  
9 classification and compensation system. The principles which  
10 undergird the policy changes are designed to promote fairness,  
11 accountability, credibility, transparency and a systematic approach  
12 to progress (FACTS for Higher Education). The discussion shall  
13 explain the origin of changes in law and policy and show how these  
14 are the result of four years of study culminating in the findings  
15 and recommendations contained in the *Final Report to the Select*  
16 *Committee on Higher Education Personnel* (January 11, 2010).

17 (2) Seeking out credentialed, experienced human resources  
18 professionals to provide staff support to the commission, council  
19 and organizations, pursuant to section two-a, article four of this  
20 chapter, who are committed to creating a culture of constant  
21 improvement in a complex and rapidly changing environment. These  
22 professionals are catalysts to promote the Fair, Accountable,  
23 Credible, Transparent, and Systematic (FACTs) principles and to  
24 serve the organizations by assisting them in developing and  
25 maintaining best human resources practices.

26 (3) Conducting a review of the human resources function at

1 each organization pursuant to section nine, article seven of this  
2 chapter to identify best practices and areas of deficiency.

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

8 (5) Given that the state is considering a unified enterprise  
9 resource program, the commission and council shall conduct a study  
10 to determine whether a human resources information system capable  
11 of meeting a wide range of data requirements to support personnel  
12 and policy initiatives is necessary. The findings of the study,  
13 along with any recommendations, shall be reported to the  
14 Legislative Oversight Commission on Education Accountability by  
15 December 1, 2011.

16 (6) Establishing the Compensation Planning and Review  
17 Committee pursuant to section five of this article and the Job  
18 Classification Committee pursuant to section four of this article  
19 whose members participate and represent a broad range of higher  
20 education interests in the decision and policy-making process.

21 (7) Providing data throughout the implementation process to  
22 the Legislative Oversight Commission on Education Accountability to  
23 inform state policymakers of progress and to provide a forum for  
24 further discussion of higher education personnel issues and  
25 employee concerns.

26 **ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS**



1                                   **OF HIGHER EDUCATION.**

2 **§18B-10-1. Enrollment, tuition and other fees at education**  
3                                   **institutions; refund of fees.**

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

- 10           (1) Tuition and required educational and general fees;  
11           (2) Auxiliary and auxiliary capital fees; and  
12           (3) Required educational and general capital fees.

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

- 15           (1) All tuition and required educational and general fees  
16 collected;  
17           (2) All auxiliary and auxiliary capital fees collected; and  
18           (3) All required educational and general capital fees  
19 collected to support existing systemwide and institutional debt  
20 service and future systemwide and institutional debt service,  
21 capital projects and campus renewal for educational and general  
22 facilities.

- 23           (4) Subject to any covenants or restrictions imposed with  
24 respect to revenue bonds payable from the accounts, a governing  
25 board may expend funds from each special revenue account for any

1 purpose for which funds were collected within that account  
2 regardless of the original purpose for which the funds were  
3 collected.

4 (c) The purposes for which tuition and fees may be expended  
5 include, but are not limited to, health services, student  
6 activities, recreational, athletic and extracurricular activities.  
7 Additionally, tuition and fees may be used to finance a students'  
8 attorney to perform legal services for students in civil matters at  
9 the institutions. The legal services are limited to those types of  
10 cases, programs or services approved by the president of the  
11 institution where the legal services are to be performed.

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

17 (e) The schedule of all tuition and fees, and any changes in  
18 the schedule, shall be entered in the minutes of the meeting of the  
19 appropriate governing board and the board shall file with the  
20 commission or council, or both, as appropriate, and the Legislative  
21 Auditor a certified copy of the schedule and changes.

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

25 (1) Undergraduate students taking fewer than twelve credit  
26 hours in a regular term shall have their fees reduced pro rata

1 based upon one twelfth of the full-time rate per credit hour and  
2 graduate students taking fewer than nine credit hours in a regular  
3 term shall have their fees reduced pro rata based upon one ninth of  
4 the full-time rate per credit hour.

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

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

12 (1) The governing boards shall permit fee payments to be made  
13 in installments over the course of the academic term. All fees  
14 shall be paid prior to awarding course credit at the end of the  
15 academic term.

16 (2) The governing boards also shall authorize the acceptance  
17 of credit cards or other payment methods which may be generally  
18 available to students for the payment of fees. The governing  
19 boards may charge the students for the reasonable and customary  
20 charges incurred in accepting credit cards and other methods of  
21 payment.

22 (3) If a governing board determines that a student's finances  
23 are affected adversely by a legal work stoppage, it may allow the  
24 student an additional six months to pay the fees for any academic  
25 term. The governing board shall determine on a case-by-case basis  
26 whether the finances of a student are affected adversely.

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

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

7           (h) In addition to the other fees provided in this section,  
8 each governing board may impose, collect and distribute a fee to be  
9 used to finance a nonprofit, student-controlled public interest  
10 research group if the students at the institution demonstrate  
11 support for the increased fee in a manner and method established by  
12 that institution's elected student government. The fee may not be  
13 used to finance litigation against the institution.

14           (i) Governing boards shall retain tuition and fee revenues not  
15 pledged for bonded indebtedness or other purposes in accordance  
16 with the tuition rules proposed by the commission and council  
17 pursuant to this section. The tuition rules shall address the  
18 following areas:

19           (1) Providing a basis for establishing nonresident tuition and  
20 fees;

21           (2) Allowing governing boards to charge different tuition and  
22 fees for different programs;

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

26           (A) The fee shall be approved by the commission, council or

1 both, as appropriate, and either the students below the senior  
2 level at the institution or the Legislature before becoming  
3 effective;

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

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

8 (D) If the fee is approved, the amount of the state subsidy  
9 shall be reduced annually by the amount of money generated for the  
10 institution by the fees. All state subsidies for the auxiliary  
11 services shall cease five years from the date the mandatory  
12 auxiliary fee is implemented;

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

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

21 (j) A penalty may not be imposed by the commission or council  
22 upon any governing board based upon the number of nonresidents who  
23 attend the institution unless the commission or council determines  
24 that admission of nonresidents to any institution or program of  
25 study within the institution is impeding unreasonably the ability  
26 of resident students to attend the institution or participate in

1 the programs of the institution. The governing boards shall report  
2 annually to the commission or council on the numbers of  
3 nonresidents and any other enrollment information the commission or  
4 council may request.

5 (k) Tuition and fee increases of the governing boards,  
6 including the governing boards of Marshall University and West  
7 Virginia University, are subject to rules adopted by the commission  
8 and council pursuant to this section and in accordance with article  
9 three-a, chapter twenty-nine-a of this code. The commission or  
10 council, as appropriate, shall examine individually each request  
11 from a governing board for an increase and make its determinations  
12 as follows:

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

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

21 (3) In determining whether to approve or deny a governing  
22 board's request for a tuition and/or fee increase for resident  
23 students greater than the increases granted pursuant to subdivision  
24 (1) of this subsection, the commission or council shall determine  
25 the progress the governing board has made toward meeting the  
26 conditions outlined in this subsection and shall make this

1 determination the predominate factor in its decision. The  
2 commission or council shall consider the degree to which each  
3 governing board has met the following conditions:

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

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

8 (C) Continuously pursues the statewide goals for post-  
9 secondary education and the statewide compact established in this  
10 chapter;

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

14 (E) Demonstrates to the satisfaction of the commission or  
15 council that the governing board is making adequate progress toward  
16 achieving the goals for education established by the southern  
17 regional education board;

18 (F) Demonstrates to the satisfaction of the commission or  
19 council that the governing board has considered the average per  
20 capita income of West Virginia families and their ability to pay  
21 for any increases; and

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

25 (4) This section does not require equal increases among  
26 governing boards nor does it require any level of increase by a

1 governing board.

2           (5) The commission and council shall report to the Legislative  
3 Oversight Commission on Education Accountability regarding the  
4 basis for approving or denying each request as determined using the  
5 criteria established in this subsection.