

**Senate Bill No. 330**

(By Senators Plymale, Wells, Jenkins, Foster, Browning, Stollings  
and Beach)

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[Introduced January 28, 2011; referred to the Committee on  
Education; and then to the Committee on Finance.]

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

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

1 qualifications and specifying duties; requiring organization  
2 rulemaking; authorizing certain supplemental retirement,  
3 health and welfare benefit plans for certain employees;  
4 providing for certain employer and employee matches;  
5 authorizing employee payroll deductions; requiring  
6 establishment of continuing education and professional  
7 development programs for certain employees; setting forth  
8 certain employment practices; requiring certain periodic  
9 reports; specifying data to be included in reports and  
10 designating report due dates; providing certain exceptions to  
11 report due dates; requiring periodic reviews of human  
12 resources functions at certain higher education organizations;  
13 setting forth purposes of reviews; specifying review criteria  
14 and designating completion dates; requiring prior notice of  
15 reviews and setting forth certain exceptions; authorizing  
16 compensatory time off for certain employees in certain  
17 instances; setting forth conditions; defining "nonclassified"  
18 employees; limiting percentage of employees designated as  
19 nonclassified and providing certain exceptions; establishing  
20 formula for calculating percentage; providing effective date  
21 for meeting percentage limits and requiring compliance  
22 reports; authorizing certain employment by mutual agreement;  
23 setting forth terms, conditions and applicability of  
24 agreements; requiring probationary period for certain

1 employees; authorizing catastrophic leave banks and leave  
2 transfer for certain employees; setting forth terms and  
3 conditions for participation; codifying certain current  
4 practices; authorizing merit salary increases for certain  
5 employees under certain conditions; requiring study of certain  
6 employment practices; requiring report and specifying data and  
7 report due date; requiring faculty salary rules and providing  
8 for salary increases in certain instances; authorizing  
9 sabbatical leaves for certain professional personnel;  
10 specifying terms and conditions for participation; maintaining  
11 certain rights and benefits during leaves of absence under  
12 certain circumstances; requiring definition of certain terms;  
13 requiring notice of employment decisions to probationary  
14 faculty members by certain date and providing for hearings in  
15 certain instances; stating legislative intent regarding  
16 funding for certain employee salary schedules; specifying  
17 applicability of certain statutes; establishing certain terms  
18 and conditions and providing certain exceptions; providing  
19 formulas for making certain salary calculations; requiring  
20 certification of certain higher education organizations  
21 relating to certain salary funding requirements; specifying  
22 applicability of certain rules; requiring review and approval  
23 process for certain rules and specifying responsibilities of  
24 certain professional personnel relating to rulemaking;

1 providing for funding certain salary schedules; specifying  
2 certain consequences and sanctions and providing exceptions;  
3 providing short title designation; requiring maintenance of  
4 uniform job classification system; establishing job  
5 classification committee and specifying organization, powers  
6 and duties; assigning certain other powers and duties relating  
7 to job classification; establishing compensation planning and  
8 review committee and specifying organization, powers and  
9 duties; providing for establishment of market salary  
10 structures and minimum salary schedules; requiring periodic  
11 updates and specifying certain other related powers and  
12 duties; providing for periodic market salary studies and  
13 specifying application of study findings; requiring certain  
14 salary comparisons and establishing limit on variations of  
15 average salaries among employee classes; specifying authority  
16 and duty of Higher Education Policy Commission and Council for  
17 Community and Technical College Education over classification  
18 and compensation system; requiring promulgation of certain  
19 personnel rules by certain date; authorizing emergency rules  
20 with prior approval; establishing parameters for rules;  
21 specifying mechanisms for correcting identified deficiencies  
22 and requiring and authorizing certain sanctions in certain  
23 instances; providing for hearing employee appeals; requiring  
24 performance evaluations for certain employees; requiring

1 certain training for supervisory personnel; establishing terms  
2 and conditions for exercising certain operational  
3 flexibilities for governing boards; establishing goals for  
4 implementing certain statutes and rules; fixing certain  
5 implementation responsibilities; providing for review and  
6 approval of governing boards' requests for tuition and fee  
7 increases greater than set amounts; removing caps on increases  
8 in tuition and fees; clarifying procedure for rental, lease  
9 and sale of property; making technical corrections; and  
10 deleting obsolete language.

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

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

1 reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5,  
 2 §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and  
 3 §18B-7-12 of said code be amended and reenacted; that said code be  
 4 amended by adding thereto four new sections, designated §18B-7-13,  
 5 §18B-7-14, §18B-7-15 and §18B-7-16; that §18B-8-1, §18B-8-3, §18B-  
 6 8-4, §18B-8-5 and §18B-8-6 of said code be amended and reenacted;  
 7 that said code be amended by adding thereto a new section,  
 8 designated §18B-8-2; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4  
 9 of said code be amended and reenacted; that said code be amended by  
 10 adding thereto a new article, designated §18B-9A-1, §18B-9A-2,  
 11 §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-  
 12 8; that §18B-10-1 of said code be amended and reenacted; and that  
 13 §18B-19-10 of said code be amended and reenacted, all to read as  
 14 follows:

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

16 **ARTICLE 1. STATE DEPOSITORIES.**

17 **§12-1-12d. Investments by Marshall University and West Virginia**  
 18                   **University.**

19           (a) Notwithstanding any provision of this article to the  
 20 contrary, the governing boards of Marshall University and West  
 21 Virginia University each may invest certain funds with its  
 22 respective nonprofit foundation that has been established to  
 23 receive contributions exclusively for that university and which  
 24 exists on January 1, 2005. Any such investment is subject to the

1 limitations of this section.

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

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

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

20       (1) \$18 million for Marshall University and \$25 million for  
21 West Virginia University; or

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

1       (3) Notwithstanding subdivisions (1) and (2) of this  
2 subsection, with the approval of the Higher Education Policy  
3 Commission, Marshall University may increase the amount invested to  
4 \$30 million and West Virginia University may increase the amount  
5 invested to \$40 million.

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

- 18       (1) Preservation of capital;
- 19       (2) Diversification;
- 20       (3) Risk tolerance;
- 21       (4) Rate of return;
- 22       (5) Stability;
- 23       (6) Turnover;
- 24       (7) Liquidity; and

1 (8) Reasonable cost of fees.

2 (f) A governing board shall report annually by December 31 to  
3 the Governor and to the Joint Committee on Government and Finance  
4 on the performance of investments managed by its foundation  
5 pursuant to this section.

6 ~~(g) The authority of a governing board to invest moneys with  
7 its foundation pursuant to this section expires on July 1, 2011.~~

8 ~~(h)~~ (g) The amendments to this section in the second  
9 extraordinary session of the Legislature in 2010 shall apply  
10 retroactively so that the authority granted by this section shall  
11 be construed as if that authority did not expire on July 1, 2010.

12 **CHAPTER 18B. HIGHER EDUCATION.**

13 **ARTICLE 1. GOVERNANCE.**

14 **§18B-1-2. Definitions.**

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

18 "Administratively linked community and technical college"  
19 means a state institution of higher education delivering community  
20 and technical college education and programs which has maintained  
21 a contractual agreement to receive essential services from another  
22 accredited state institution of higher education prior to July 1,  
23 2008;

24 "Advanced technology center" means a facility established

1 under the direction of an independent community and technical  
2 college or the council for the purpose of implementing and  
3 delivering education and training programs for high-skill, high-  
4 performance Twenty-first Century workplaces;

5 "Board of visitors" means the advisory board previously  
6 appointed for the West Virginia Graduate College and the advisory  
7 board previously appointed for West Virginia University Institute  
8 of Technology, which provide guidance to the Marshall University  
9 Graduate College and West Virginia University Institute of  
10 Technology, respectively;

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

17 "Chancellor" means the Chancellor for Higher Education where  
18 the context refers to a function of the Higher Education Policy  
19 Commission. "Chancellor" means Chancellor for Community and  
20 Technical College Education where the context refers to a function  
21 of the West Virginia Council for Community and Technical College  
22 Education;

23 "Chancellor for Community and Technical College Education"  
24 means the chief executive officer of the West Virginia Council for

1 Community and Technical College Education employed pursuant to  
2 section three, article two-b of this chapter;

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

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

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

20 "Community and technical college education" means the  
21 programs, faculty, administration and funding associated with the  
22 delivery of community and technical college education programs;

23 "Community and technical college education program" means any  
24 college-level course or program beyond the high school level

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

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

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

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

22 "Free-standing community and technical colleges" means  
23 Southern West Virginia Community and Technical College, West  
24 Virginia Northern Community and Technical College, and Eastern West

1 Virginia Community and Technical College, which may not be operated  
2 as branches or off-campus locations of any other state institution  
3 of higher education;

4 "Governing boards" or "boards" means the institutional boards  
5 of Governors created by section one, article two-a of this chapter;

6 ~~"Higher education institution" means any institution as~~  
7 ~~defined by Sections 401(f), (g) and (h) of the federal Higher~~  
8 ~~Education Facilities Act of 1963, as amended;~~

9 "Higher Education Policy Commission", "Policy Commission" or  
10 "Commission" means the commission created by section one, article  
11 one-b of this chapter;

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

1 Virginia University at Parkersburg; and

2 "Institutional compact" means the compact between the  
3 commission or council and a state institution of higher education  
4 under its jurisdiction, as described in section seven, article one-  
5 d of this chapter;

6 "Institutional operating budget" or "operating budget" means  
7 for any fiscal year an institution's total unrestricted education  
8 and general funding from all sources, including, but not limited  
9 to, tuition and fees and legislative appropriation, and any  
10 adjustments to that funding as approved by the commission or  
11 council based on comparisons with peer institutions or to reflect  
12 consistent components of peer operating budgets;

13 "Peer institutions", "peer group" or "peers" means public  
14 institutions of higher education used for comparison purposes and  
15 selected by the commission pursuant to section three, article one-a  
16 of this chapter;

17 "Rule" or "rules" means a regulation, standard, policy or  
18 interpretation of general application and future effect;

19 "Sponsoring institution" means a state institution of higher  
20 education that maintained an administrative link to a community and  
21 technical college providing essential services prior to July 1,  
22 2008. This definition includes institutions whose governing boards  
23 had under their jurisdiction a community and technical college,  
24 regional campus or a division delivering community and technical

1 college education and programs;

2 "State college" means Bluefield State College, Concord  
3 University, Fairmont State University, Glenville State College,  
4 Shepherd University, West Liberty University or West Virginia State  
5 University;

6 "State institution of higher education" means any university,  
7 college or community and technical college under the jurisdiction  
8 of a governing board as that term is defined in this section;

9 "Statewide network of independently accredited community and  
10 technical colleges" or "community and technical college network"  
11 means the state institutions of higher education under the  
12 jurisdiction of the West Virginia Council for Community and  
13 Technical College Education which are independently accredited or  
14 are seeking independent accreditation by the regional accrediting  
15 agency, each governed by its own independent governing board, and  
16 each having a core mission of providing affordable access to and  
17 delivering high quality community and technical education in every  
18 region of the state;

19 "Vice Chancellor for Administration" means the person employed  
20 in accordance with section two, article four of this chapter. Any  
21 reference in this chapter or chapter eighteen-c of this code to  
22 "Senior Administrator" means Vice Chancellor for Administration;

23 "Vice Chancellor for Human Resources" means the person  
24 employed by the commission and the council jointly pursuant to

1 section two-a, article four of this chapter. The person employed as  
2 senior director of human resources by the commission on January 1,  
3 2011, becomes the Vice Chancellor for Human Resources on the  
4 effective date of this section; and

5 "West Virginia Consortium for Undergraduate Research and  
6 Engineering" or "West Virginia CURE" means the collaborative  
7 planning group established by article one-c of this chapter.

8 **§18B-1-6. Rulemaking.**

9 (a) The commission is hereby empowered to promulgate, adopt,  
10 amend or repeal rules, in accordance with ~~the provisions of~~ article  
11 three-a, chapter twenty-nine-a of this code, subject to ~~the~~  
12 ~~provisions of~~ section three of this article.

13 (b) The council is hereby empowered to promulgate, adopt,  
14 amend or repeal rules in accordance with ~~the provisions of~~ article  
15 three-a, chapter twenty-nine-a of this code, ~~and~~ subject to ~~the~~  
16 ~~provisions of~~ section three of this article. This grant of rule-  
17 making power extends only to those areas over which the council has  
18 been granted specific authority and jurisdiction by law.

19 (c) As it relates to the authority granted to governing boards  
20 of state institutions of higher education to promulgate, adopt,  
21 amend or repeal any rule under ~~the provisions of~~ this code:

22 (1) "Rule" means any regulation, guideline, directive,  
23 standard, statement of policy or interpretation of general  
24 application which has institution-wide effect or which affects the

1 rights, privileges or interests of employees, students or citizens.  
2 Any regulation, guideline, directive, standard, statement of policy  
3 or interpretation of general application that meets this definition  
4 is a rule for the purposes of this section.

5 (2) Regulations, guidelines or policies established for  
6 individual units, divisions, departments or schools of the  
7 institution, which deal solely with the internal management or  
8 responsibilities of a single unit, division, department or school  
9 or with academic curricular policies that do not constitute a  
10 mission change for the institution, are excluded from this  
11 subsection, except for the requirements relating to posting.

12 (3) The commission and council each shall promulgate a rule to  
13 guide the development and approval of rules made by their  
14 respective governing boards, including the governing boards of  
15 Marshall University and West Virginia University. The rules  
16 promulgated by the commission and council shall include, but are  
17 not limited to, the following provisions which shall be included in  
18 the rule on rules adopted by each governing board of a state  
19 institution of higher education:

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

24 (B) Designation of a single location where all proposed and

1 approved rules, guidelines and other policy statements are posted  
2 and can be accessed by the public; ~~and~~

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

6 (D) A procedure for the governing board to follow in  
7 submitting its rules for review and approval to the commission  
8 and/or council, as appropriate, except the following conditions  
9 apply for the governing boards of Marshall University and West  
10 Virginia University:

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

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

15 (iii) If a governing board receives comments or suggestions on  
16 a rule from the commission, it shall record these as part of the  
17 minute record. The rule is not effective and may not be implemented  
18 until the governing board holds a meeting and places on the meeting  
19 agenda the comments it has received from the commission.

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

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

5 (f) The governing boards ~~of Marshall University and West~~  
6 ~~Virginia University, respectively,~~ shall promulgate and adopt any  
7 rule which they are required to adopt by this chapter or chapter  
8 eighteen-c of this code no later than ~~the first day of July 1, two~~  
9 ~~thousand five~~ July 1, 2011 unless a later date is specified. On  
10 and after this date:

11 (1) Any rule of ~~either~~ a governing board which meets the  
12 definition set out in subsection (c) of this section and which has  
13 not been promulgated and adopted by formal vote of the appropriate  
14 governing board is void and may not be enforced;

15 (2) Any authority granted by this code which inherently  
16 requires the governing board to promulgate and adopt a rule is void  
17 until the governing board complies with ~~the provisions of this~~  
18 section.

19 (g) Within thirty days of the adoption of a rule, including  
20 repeal or amendment of an existing rule, ~~the~~ and before the change  
21 is implemented, ~~a governing boards of Marshall University and West~~  
22 ~~Virginia University, respectively,~~ board shall furnish to the  
23 ~~commission or the council, as appropriate,~~ a copy of each rule  
24 which it has ~~been formally~~ adopted to the commission or the

1 council, respectively, for review and approval, except the  
 2 governing boards of Marshall University and West Virginia  
 3 University are subject to subsection (c) of this section.

4 (h) ~~Not later than~~ Annually, by October 1, ~~2005, and annually~~  
 5 ~~thereafter,~~ each governing board of a state institution of higher  
 6 ~~education~~ shall file with the commission or the council, as  
 7 appropriate, a list of all ~~institutional~~ rules that were in effect  
 8 for that institution on July 1 of that year, including the most  
 9 recent date on which each rule was considered and adopted, amended  
 10 or repealed by the governing board. For all rules adopted, amended  
 11 or repealed after the effective date of this section, the list  
 12 shall include a statement by the chair of the governing board  
 13 certifying that the governing board has complied with ~~the~~  
 14 ~~provisions of~~ this section when each listed rule was promulgated  
 15 and adopted.

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

17 **§18B-1B-4. Powers and duties of Higher Education Policy**

18 **Commission.**

19 (a) The primary responsibility of the commission is to  
 20 develop, establish and implement policy that will achieve the  
 21 goals, ~~and~~ objectives and priorities found in section one-a,  
 22 article one and article one-d of this chapter. The commission  
 23 shall exercise its authority and carry out its responsibilities in  
 24 a manner that is consistent and not in conflict with the powers and

1 duties assigned by law to the West Virginia Council for Community  
2 and Technical College Education and the powers and duties assigned  
3 to the governing boards. ~~of Marshall University and West Virginia~~  
4 ~~University, respectively.~~ To that end, the commission has the  
5 following powers and duties relating to the institutions governing  
6 boards under its jurisdiction:

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

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

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

20 (2) Develop, oversee and advance the promulgation and  
21 implementation jointly with the council of a financing policy rule  
22 for state institutions of higher education ~~in West Virginia~~ under  
23 its jurisdiction. The policy rule shall meet the following  
24 criteria:

1 (A) Provide for an adequate level of ~~education~~ educational and  
2 general funding for institutions pursuant to section five, article  
3 one-a of this chapter;

4 (B) Serve to maintain institutional assets, including, but not  
5 limited to, human and physical resources and eliminating deferred  
6 maintenance; and

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

11 ~~(D) Incorporate the plan for strategic funding to strengthen~~  
12 ~~capacity for support of community and technical college education~~  
13 ~~established by the West Virginia Council for Community and~~  
14 ~~Technical College Education pursuant to the provisions of section~~  
15 ~~six, article two b of this chapter;~~

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

18 (A) Developing, building public consensus around and  
19 sustaining attention to a long-range public policy agenda. In  
20 developing the agenda, the commission and council shall seek input  
21 from the Legislature and the Governor and specifically from the  
22 state Board of Education and local school districts in order to  
23 create the necessary linkages to assure smooth, effective and  
24 seamless movement of students through the public education and

1 post-secondary education systems and to ensure that the needs of  
2 public school courses and programs can be fulfilled by the  
3 graduates produced and the programs offered;

4 (B) Ensuring that the governing boards carry out their duty  
5 effectively to govern the individual institutions of higher  
6 education; and

7 (C) Holding the ~~higher education institutions~~ governing boards  
8 and the higher education systems as a whole accountable for  
9 accomplishing their missions and implementing ~~the provisions of the~~  
10 their compacts;

11 (4) Develop and adopt each ~~institutional~~ compact for the  
12 governing boards under its jurisdiction;

13 (5) Review and adopt the annual updates of the institutional  
14 compacts;

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

16 (A) The Governor for implementation of the public policy  
17 agenda; and

18 (B) The Legislature by maintaining a close working  
19 relationship with the legislative leadership and the Legislative  
20 Oversight Commission on Education Accountability;

21 (7) Jointly with the council, promulgate legislative rules  
22 pursuant to article three-a, chapter twenty-nine-a of this code to  
23 fulfill the purposes of section five, article one-a of this  
24 chapter;

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

3           (9) Establish and implement the benchmarks and performance  
4 indicators necessary to measure institutional ~~achievement towards~~  
5 progress in achieving state policy priorities and institutional  
6 missions pursuant to section ~~two, article one-a~~ seven, article one-  
7 d of this chapter;

8           (10) ~~Annually~~ Report to the Legislature and to the Legislative  
9 Oversight Commission on Education Accountability annually during  
10 the January interim ~~meetings~~ meeting period on a date and at a time  
11 and location to be determined by the President of the Senate and  
12 the Speaker of the House of Delegates. The report shall address at  
13 least the following:

14           (A) The performance of its system of higher education during  
15 the previous fiscal year, including, but not limited to, progress  
16 in meeting ~~goals stated in the compacts and progress of the~~  
17 ~~institutions and the higher education system as a whole in meeting~~  
18 the goals, ~~and~~ objectives and priorities set forth in section one-  
19 a, article one and article one-d of this chapter and in the  
20 commission's master plan and institutional compacts;

21           ~~(B) An analysis of enrollment data collected pursuant to~~  
22 ~~section one, article ten of this chapter and recommendations for~~  
23 ~~any changes necessary to assure access to high-quality, high-demand~~  
24 ~~education programs for West Virginia residents;~~

1       ~~(C)~~ (B) The commission's priorities ~~established~~ for new  
2 operating and capital investment investments ~~needs pursuant to~~  
3 ~~subdivision (11) of this subsection~~ and the justification for ~~such~~  
4 the priority;

5       ~~(D)~~ (C) Recommendations of the commission for statutory  
6 changes ~~needed~~ necessary or expedient to ~~further the~~ achieve state  
7 goals, and objectives and priorities; ~~set forth in section one-a,~~  
8 ~~article one of this chapter;~~

9       (11) Establish a formal process for identifying ~~needs for~~  
10 ~~capital investments~~ investment needs and for determining priorities  
11 for these investments for consideration by the Governor and the  
12 Legislature as part of the appropriation request process pursuant  
13 to article nineteen of this chapter. ~~It is the responsibility of~~  
14 ~~the commission to assure a fair distribution of funds for capital~~  
15 ~~projects between the commission and the council. To that end the~~  
16 ~~commission shall take the following steps:~~

17       ~~(A)~~ Receive the list of priorities developed by the council  
18 for capital investment for the institutions under the council's  
19 jurisdiction pursuant to subsection (b), section six, article two-b  
20 of this chapter;

21       ~~(B)~~ Place the ranked list of projects on the agenda for action  
22 within sixty days of the date on which the list was received;

23       ~~(C)~~ Select a minimum of three projects from the list submitted  
24 by the council to be included on the ranked list established by the

1 ~~commission. At least one of the three projects selected must come~~  
2 ~~from the top two priorities established by the council;~~

3 ~~(12) Maintain guidelines for institutions to follow concerning~~  
4 ~~extensive capital project management except the governing boards of~~  
5 ~~Marshall University and West Virginia University are not subject to~~  
6 ~~the provisions of this subdivision as it relates to the state~~  
7 ~~institutions of higher education known as Marshall University and~~  
8 ~~West Virginia University. The guidelines shall provide a process~~  
9 ~~for developing capital projects, including, but not limited to, the~~  
10 ~~notification by an institution to the commission of any proposed~~  
11 ~~capital project which has the potential to exceed one million~~  
12 ~~dollars in cost. Such a project may not be pursued by an~~  
13 ~~institution without the approval of the commission. An institution~~  
14 ~~may not participate directly or indirectly with any public or~~  
15 ~~private entity in any capital project which has the potential to~~  
16 ~~exceed one million dollars in cost;~~

17 (12) Develop standards and evaluate governing board requests  
18 for capital project financing in accordance with article nineteen  
19 of this chapter;

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

24 ~~(13)~~ (14) Acquire legal services as ~~are~~ considered necessary,

1 including representation of the commission, its ~~institutions,~~  
2 governing boards, employees and officers before any court or  
3 administrative body, notwithstanding any other provision of this  
4 code to the contrary. The counsel may be employed either on a  
5 salaried basis or on a reasonable fee basis. In addition, the  
6 commission may, but is not required to, call upon the Attorney  
7 General for legal assistance and representation as provided by law;

8 ~~(14)~~ (15) Employ a Chancellor for Higher Education pursuant to  
9 section five of this article;

10 ~~(15)~~ (16) Employ other staff as necessary and appropriate to  
11 carry out the duties and responsibilities of the commission and the  
12 council, in accordance with ~~the provisions of~~ article four of this  
13 chapter;

14 ~~(16)~~ (17) Provide suitable offices in Kanawha County for the  
15 chancellor, vice chancellors and other staff;

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

24 ~~(18)~~ (19) Approve the total compensation package from all

1 sources for presidents of institutions under its jurisdiction, as  
2 proposed by the governing boards. The governing boards must obtain  
3 approval from the commission of the total compensation package both  
4 when institutional presidents are employed initially and afterward  
5 when any change is made in the amount of the total compensation  
6 package;

7       ~~(19)~~ (20) Establish and implement the policy of the state to  
8 assure that parents and students have sufficient information at the  
9 earliest possible age on which to base academic decisions about  
10 what is required for students to be successful in college, other  
11 post-secondary education and careers related, as far as possible,  
12 to results from current assessment tools in use in West Virginia;

13       ~~(20)~~ (21) Approve and implement a uniform standard jointly  
14 with the council to determine which students shall be placed in  
15 remedial or developmental courses. The standard shall be aligned  
16 with college admission tests and assessment tools used in West  
17 Virginia and shall be applied uniformly by the governing boards  
18 throughout the public higher education system. The chancellors  
19 shall develop a clear, concise explanation of the standard which  
20 they shall communicate to the state Board of Education and the  
21 state superintendent of Schools;

22       ~~(21) Review and approve or disapprove capital projects as~~  
23 ~~described in subdivision (11) of this subsection;~~

24       (22) Jointly with the council, develop and implement an

1 oversight plan to manage systemwide technology ~~such as the~~  
2 including, but not limited to, the following:

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

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

9 (C) Notwithstanding any other provision of law or this code to  
10 the contrary, the council, commission and ~~state institutions of~~  
11 ~~higher education~~ governing boards are not subject to the  
12 jurisdiction of the Chief Technology Officer for any purpose;

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

20 (24) Establish and implement policies and procedures to ensure  
21 that ~~students~~ a student may transfer and apply toward the  
22 requirements for a degree the maximum number of credits earned at  
23 any regionally accredited in-state or out-of-state higher education  
24 institution with as few requirements to repeat courses or to incur

1 additional costs as ~~is~~ are consistent with sound academic policy;

2       (25) Establish and implement policies and procedures to ensure  
3 that ~~students~~ a student may transfer and apply toward the  
4 requirements for a master's degree the maximum number of credits  
5 earned at any regionally accredited in-state or out-of-state higher  
6 education institution with as few requirements to repeat courses or  
7 to incur additional costs as ~~is~~ are consistent with sound academic  
8 policy;

9       (26) Establish and implement policies and programs, in  
10 cooperation with the council and the ~~institutions of higher~~  
11 ~~education~~ governing boards, through which ~~students~~ a student who  
12 ~~have~~ has gained knowledge and skills through employment,  
13 participation in education and training at vocational schools or  
14 other education institutions, or Internet-based education programs,  
15 may demonstrate by competency-based assessment that ~~they have~~ he or  
16 she has the necessary knowledge and skills to be granted academic  
17 credit or advanced placement standing toward the requirements of an  
18 ~~associate~~ associate's degree or a bachelor's degree at a state  
19 institution of higher education;

20       (27) Seek out and attend regional, national and international  
21 meetings and forums on education and workforce development-related  
22 topics as, in the commission's discretion, ~~is~~ are critical for the  
23 performance of their duties as members, for the purpose of keeping  
24 abreast of education trends and policies to aid it in developing

1 the policies for this state to meet the established education  
2 goals, ~~and~~ objectives and priorities pursuant to section one-a,  
3 article one and article one-d of this chapter;

4 (28) ~~Develop, establish~~ Promulgate and implement a rule for  
5 higher education governing boards and institutions to follow when  
6 considering capital projects pursuant to article nineteen of this  
7 chapter; ~~The guidelines shall assure that the governing boards and~~  
8 ~~institutions do not approve or promote capital projects involving~~  
9 ~~private sector businesses which would have the effect of reducing~~  
10 ~~property taxes on existing properties or avoiding, in whole or in~~  
11 ~~part, the full amount of taxes which would be due on newly-~~  
12 ~~developed or future properties;~~

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

1           (30) The commission ~~has the authority to~~ may assess  
2 institutions under its jurisdiction, including ~~the state~~  
3 ~~institutions of higher education known as~~ Marshall University and  
4 West Virginia University, for the payment of expenses of the  
5 commission or for the funding of statewide higher education  
6 services, obligations or initiatives related to the goals set forth  
7 for the provision of public higher education in the state;

8           (31) Promulgate rules allocating reimbursement of  
9 appropriations, if made available by the Legislature, to  
10 ~~institutions of higher education~~ governing boards for qualifying  
11 noncapital expenditures incurred in ~~the provision of~~ providing  
12 services to students with physical, learning or severe sensory  
13 disabilities;

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

1 required to be appointed by these previous governing boards;

2 (33) Pursuant to ~~the provisions of~~ article three-a, chapter  
3 twenty-nine-a of this code and section six, article one of this  
4 chapter, promulgate rules ~~as~~ necessary or expedient to fulfill the  
5 purposes of this chapter. The commission and the council shall  
6 promulgate a uniform joint legislative rule for the ~~purpose~~  
7 purposes of standardizing, as much as possible, the administration  
8 of personnel matters among the state institutions of higher  
9 education and implementing the provisions of articles seven, eight,  
10 nine and nine-a of this chapter;

11 (34) Determine when a joint rule among the governing boards ~~of~~  
12 ~~the institutions~~ under its jurisdiction is necessary or required by  
13 law and, in those instances, in consultation with the governing  
14 boards ~~of all the institutions~~ under its jurisdiction, promulgate  
15 the joint rule;

16 (35) ~~In consultation with the governing boards of Marshall~~  
17 ~~University and West Virginia University,~~ Promulgate and implement  
18 a policy rule jointly with the council whereby course credit earned  
19 at a community and technical college transfers for program credit  
20 at any other state institution of higher education and is not  
21 limited to fulfilling a general education requirement;

22 (36) By November 1, 2011, promulgate a ~~joint~~ rule ~~with the~~  
23 ~~council~~ pursuant to section one, article ten of this chapter,  
24 establishing tuition and fee policy for all ~~institutions of higher~~

1 ~~education governing boards under the jurisdiction of the~~  
2 ~~commission, other than including state institutions of higher~~  
3 ~~education known as Marshall University and West Virginia~~  
4 ~~University. which are subject to the provisions of section one,~~  
5 ~~article ten of this chapter.~~ The rule shall include, but is not  
6 limited to, the following:

7 (A) Comparisons with peer institutions;

8 (B) Differences among institutional missions;

9 (C) Strategies for promoting student access;

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

11 (E) Such other policies as the commission and council consider  
12 appropriate;

13 (37) Implement general disease awareness initiatives to  
14 educate parents and students, particularly dormitory residents,  
15 about meningococcal meningitis; the potentially life-threatening  
16 dangers of contracting the infection; behaviors and activities that  
17 can increase risks; measures that can be taken to prevent contact  
18 or infection; and potential benefits of vaccination. The  
19 commission shall encourage ~~institutions~~ governing boards that  
20 provide medical care to students to provide access to the vaccine  
21 for those who wish to receive it; and

22 (38) Notwithstanding any other provision of this code to the  
23 contrary sell, lease, convey or otherwise dispose of all or part of  
24 any real property ~~which it may own~~ that it owns, ~~either by contract~~

1 ~~or at public auction, and to retain the proceeds of any such sale~~  
2 ~~or lease: *Provided, That* *Provided, That:* in accordance with article  
3 nineteen of this chapter.~~

4 ~~(A) The commission may not sell, lease, convey or otherwise~~  
5 ~~dispose of any real property without first:~~

6 ~~(i) Providing notice to the public in the county in which the~~  
7 ~~real property is located by a Class II legal advertisement pursuant~~  
8 ~~to section two, article three, chapter fifty-nine of this code;~~

9 ~~(ii) Holding a public hearing on the issue in the county in~~  
10 ~~which the real property is located; and~~

11 ~~(iii) Providing notice to the Joint Committee on Government~~  
12 ~~and Finance; and~~

13 ~~(B) Any proceeds from the sale, lease, conveyance or other~~  
14 ~~disposal of real property that is used jointly by institutions or~~  
15 ~~for statewide programs under the jurisdiction of the commission or~~  
16 ~~the council shall be transferred to the General Revenue Fund of the~~  
17 ~~state.~~

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

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

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

3 (3) Development and implementation of institutional mission  
4 definitions, including use of incentive funds to influence  
5 institutional behavior in ways that are consistent with public  
6 priorities;

7 (4) Academic program review and approval for ~~institutions~~  
8 governing boards under its jurisdiction. ~~including~~ The review and  
9 approval includes use of institutional missions as a template to  
10 judge the appropriateness of both new and existing programs and the  
11 authority to implement needed changes.

12 (A) The commission's authority to review and approve academic  
13 programs for either ~~the state institution of higher education known~~  
14 ~~as~~ Marshall University or West Virginia University is limited to  
15 programs that are proposed to be offered at a new location not  
16 presently served by that institution;

17 (B) The commission shall approve or disapprove proposed  
18 academic degree programs in those instances where approval is  
19 required within ninety days from the date the governing board makes  
20 an official request. The commission may not withhold approval  
21 unreasonably.

22 (5) Distribution of funds appropriated to the commission,  
23 including incentive and performance-based ~~funding~~ funds;

24 (6) Administration of state and federal student aid programs

1 under the supervision of the vice chancellor for administration,  
2 including promulgation of ~~any~~ rules necessary to administer those  
3 programs;

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

7 (8) ~~Development, establishment and implementation of~~  
8 Developing, establishing and implementing information, assessment,  
9 ~~and accountability and personnel systems, including maintenance of~~  
10 maintaining statewide data systems that facilitate long-term  
11 planning and accurate measurement of strategic outcomes and  
12 performance indicators;

13 (9) Jointly with the council, ~~developing, establishing~~  
14 promulgating and implementing ~~policies~~ rules for licensing and  
15 oversight for both public and private degree-granting and  
16 nondegree-granting institutions that provide post-secondary  
17 education courses or programs in the state. ~~; pursuant to the~~  
18 ~~findings and policy recommendations required by section eleven of~~  
19 ~~this article;~~ The council has authority and responsibility for  
20 approval of all post-secondary courses or programs providing  
21 community and technical college education as defined in section  
22 two, article one of this chapter.

23 (10) ~~Development, implementation and oversight of~~ Developing,  
24 implementing and overseeing statewide and ~~region-wide~~ regional

1 projects and initiatives related to providing post-secondary  
2 education at the baccalaureate level and above such as those using  
3 funds from federal categorical programs or those using incentive  
4 and performance-based ~~funding~~ funds from any source; ~~and~~

5 (11) Quality assurance that intersects with all other duties  
6 of the commission particularly in the areas of research, data  
7 collection and analysis, personnel administration, planning, policy  
8 analysis, program review and approval, budgeting and information  
9 and accountability systems; and

10 (12) Developing budgets and allocating resources for governing  
11 boards under its jurisdiction:

12 (A) For all governing boards under its jurisdiction, except  
13 the governing boards of Marshall University and West Virginia  
14 University, the commission shall review institutional operating  
15 budgets, review and approve capital budgets, and distribute  
16 incentive and performance-based funds;

17 (B) For the governing boards of Marshall University and West  
18 Virginia University, the commission shall distribute incentive and  
19 performance-based funds and may review and comment upon the  
20 institutional operating budgets and capital budgets. The  
21 commission's comments, if any, shall be made part of the governing  
22 board's minute record.

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

1 duties ~~as may be~~ assigned to it by law, the commission has ~~such~~  
2 other powers and duties ~~as may be~~ necessary or expedient to  
3 accomplish the purposes of this article.

4 (d) The commission ~~is authorized to~~ may withdraw specific  
5 powers of ~~any a~~ governing board ~~of an institution~~ under its  
6 jurisdiction for a period not to exceed two years, if the  
7 commission ~~makes a determination~~ determines that any of the  
8 following conditions exist:

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

12 (2) The commission has received information, substantiated by  
13 independent audit, of significant mismanagement or failure to carry  
14 out the powers and duties of the ~~board of Governors~~ governing board  
15 according to state law; or

16 (3) Other circumstances which, in the view of the commission,  
17 severely limit the capacity of the ~~board of Governors~~ governing  
18 board to exercise its powers or carry out its duties and  
19 responsibilities.

20 The commission may not withdraw specific powers for a period  
21 ~~of withdrawal of specific powers may not exceed~~ exceeding two  
22 years. During ~~which time the commission is authorized to~~ the  
23 withdrawal period, the commission shall take all steps necessary to  
24 reestablish ~~the conditions for restoration of~~ sound, stable and

1 responsible institutional governance.

2 **§18B-1B-5. Employment of Chancellor for Higher Education; office;**  
3 **powers and duties generally; employment of Vice**  
4 **Chancellors and other staff.**

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

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

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

15 (2) Demonstrates strong communication skills;

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

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

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

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

1 Sciences, the duties assigned to this office by law are the  
2 responsibility of the chancellor or a designee.

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

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

15 ~~(h)~~ (i) The commission may employ a Vice Chancellor for State  
16 Colleges who serves at the will and pleasure of the commission. ~~It~~  
17 ~~is the duty and responsibility of~~ At a minimum, the Vice Chancellor  
18 for State Colleges ~~to~~ shall perform the following duties:

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

22 (2) Advise, assist and consult regularly with the  
23 ~~institutional~~ presidents and ~~institutional~~ boards of Governors  
24 governing boards of each state college;

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

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

7           In addition, the Vice Chancellor for State Colleges ~~has the~~  
8 ~~responsibility and the duty to~~ shall provide staff assistance to  
9 the ~~institutional~~ presidents and governing boards to the extent  
10 practicable.

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

17          ~~(j)~~ (k) The chancellor is responsible for the daily operations  
18 of the commission and has the following responsibilities relating  
19 to the commission and the ~~institutions~~ governing boards under its  
20 jurisdiction:

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

23           (2) To develop and submit annual reports on the implementation  
24 plan to achieve the goals and objectives set forth in section one-

1 a, article one and article one-d of this chapter, and in the  
2 ~~institutional~~ compacts;

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

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

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

17 ~~(k)~~ (l) The chancellor shall be reimbursed for all actual and  
18 necessary expenses incurred in the performance of all assigned  
19 duties and responsibilities.

20 ~~(l)~~ (m) The chancellor, with the commission, advises the  
21 Legislature on matters of higher education in West Virginia. The  
22 chancellor shall work closely with the Legislative Oversight  
23 Commission on Education Accountability and with the elected  
24 leadership of the state to ensure that they are fully informed

1 about higher education issues and that the commission fully  
2 understands the goals, objectives and priorities for higher  
3 education that the Legislature has established by law.

4 ~~(m)~~ (n) The chancellor may design and develop for  
5 consideration by the commission new statewide or ~~regional~~ region-  
6 wide initiatives in accordance with the goals set forth in section  
7 one-a, article one and article one-d of this chapter, and the  
8 public policy agenda articulated by the commission. In those  
9 instances where the initiatives to be proposed have a direct and  
10 specific impact or connection to community and technical college  
11 education as well as to baccalaureate and graduate education, the  
12 Chancellor for Higher Education and the Chancellor for Community  
13 and Technical College Education shall design and develop the  
14 initiatives jointly for consideration by the commission and the  
15 council.

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

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

24 (2) Appropriate coordination of missions and programs.

1 ~~To further the goals of cooperation and coordination between~~  
2 ~~the Commission and the state Board of Education, the chancellor~~  
3 ~~serves as an ex officio, nonvoting member of the state Board of~~  
4 ~~Education.~~

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

6 **§18B-2A-3. Supervision of governing boards; promulgation of rules.**

7 (a) The governing boards are subject to the supervision of the  
8 commission or the council, as appropriate, except ~~for~~ in those  
9 instances where specific statutory exceptions are granted by law to  
10 the governing boards of Marshall University and West Virginia  
11 University. ~~as it relates to the state institutions of higher~~  
12 ~~education known as Marshall University and West Virginia University~~

13 (b) The governing boards of all state institutions of higher  
14 education are subject to the provisions of law that relate to the  
15 administration of personnel matters including, specifically,  
16 articles seven, eight, nine and nine-a of this chapter and to rules  
17 promulgated and adopted in accordance with these provisions.

18 (c) The Chancellor for Higher Education and the Chancellor for  
19 Community and Technical College Education, under the supervision of  
20 their respective boards, are responsible for the coordination of  
21 policies, ~~and~~ purposes and rules of the governing boards and shall  
22 provide for and facilitate sufficient interaction among the  
23 governing boards and between the governing boards and the state  
24 Board of Education to meet the goals and objectives provided in the

1 compacts and in section one-a, article one and article one-d of  
2 this chapter.

3 ~~(b)~~ (d) The governing boards and the state Board of Education  
4 shall provide ~~any and~~ all information requested by the commission  
5 ~~or~~ and the council, whether the request is made separately or  
6 jointly, in an appropriate format and in a timely manner.

7 **§18B-2A-4. Powers and duties of governing boards generally.**

8 Each governing board separately has the following powers and  
9 duties:

10 (a) Determine, control, supervise and manage the financial,  
11 business and education policies and affairs of the state  
12 institution of higher education under its jurisdiction;

13 (b) Develop a master plan for the institution under its  
14 jurisdiction.

15 (1) The ultimate responsibility for developing and updating  
16 ~~the~~ each master ~~plans~~ plan at the ~~institutional level~~ institution  
17 resides with the ~~board of Governors~~ governing board, but the  
18 ultimate responsibility for approving the final version of ~~the~~  
19 ~~institutional~~ each master ~~plans~~ plan, including periodic updates,  
20 resides with the commission or council, as appropriate.

21 (2) Each master plan shall include, but is not ~~be~~ limited to,  
22 the following:

23 (A) A detailed demonstration of how the master plan will be  
24 used to meet the goals, ~~and~~ objectives and priorities of the

1 ~~institutional~~ 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) ~~Document~~ Documentation ~~the involvement of~~ showing how the  
9 governing board involved the commission or council, as appropriate,  
10 ~~institutional~~ constituency groups, clientele of the institution and  
11 the general public in the development of all segments of the  
12 ~~institutional~~ master plan.

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

23 (c) Develop a ten-year campus development plan in accordance  
24 with article nineteen of this chapter.

1       ~~(c)~~ (d) Prescribe for the institution under its jurisdiction,  
2 in accordance with its master plan and compact, specific functions  
3 and responsibilities to achieve the goals, objectives and  
4 priorities established in articles one and one-d of this chapter to  
5 meet the higher education needs of its area of responsibility and  
6 to avoid unnecessary duplication;

7       ~~(d)~~ (e) Direct the preparation of ~~a budget~~ an appropriation  
8 request for the institution under its jurisdiction, which relates  
9 directly to missions, goals and projections ~~as~~ found in the  
10 ~~institutional~~ master plan and the ~~institutional~~ compact;

11       ~~(e)~~ (f) Consider, revise and submit for review and approval to  
12 the commission or council, as appropriate, ~~a budget~~ an  
13 appropriation request on behalf of the institution under its  
14 jurisdiction;

15       ~~(f)~~ (g) Review, at least every five years, all academic  
16 programs offered at the institution under its jurisdiction. The  
17 review shall address the viability, adequacy and necessity of the  
18 programs in relation to established state goals, objectives and  
19 priorities, the ~~institutional~~ master plan, the ~~institutional~~  
20 compact and the education and workforce needs of its responsibility  
21 district. As a part of the review, each governing board shall  
22 require the institution under its jurisdiction to conduct periodic  
23 studies of its graduates and their employers to determine placement  
24 patterns and the effectiveness of the education experience. Where

1 appropriate, these studies should coincide with the studies  
2 required of many academic disciplines by their accrediting bodies;  
3 ~~(g)~~ (h) Ensure that the sequence and availability of academic  
4 programs and courses offered by the institution under its  
5 jurisdiction is such that students have the maximum opportunity to  
6 complete programs in the time frame normally associated with  
7 program completion. Each governing board is responsible to see  
8 that the needs of nontraditional college-age students are  
9 appropriately addressed and, to the extent it is possible for the  
10 individual governing board to control, to assure core course work  
11 completed at the institution under its jurisdiction is transferable  
12 to any other state institution of higher education for credit with  
13 the grade earned;

14 ~~(h)~~ (i) Subject to ~~the provisions of~~ article one-b of this  
15 chapter, approve the teacher education programs offered ~~in~~ at the  
16 institution under its control. In order to permit graduates of  
17 teacher education programs to receive a degree from a nationally  
18 accredited program and in order to prevent expensive duplication of  
19 program accreditation, the commission may select and use one  
20 nationally recognized teacher education program accreditation  
21 standard as the appropriate standard for program evaluation;

22 ~~(i)~~ (j) ~~Use~~ Involve faculty, students and classified  
23 employees in ~~institutional~~ institution-level planning and decision-  
24 making when those groups are affected;

1       ~~(j)~~ (k) Subject to ~~the provisions of~~ federal law and pursuant  
2 to ~~the provisions of article~~ articles seven, eight, nine and nine-a  
3 of this chapter and to rules adopted by the commission and the  
4 council, administer a system for the management of personnel  
5 matters, including, but not limited to, ~~personnel classification,~~  
6 ~~compensation and discipline~~ for employees at the institution under  
7 its jurisdiction;

8       ~~(k)~~ (l) Administer a system for hearing employee grievances  
9 and appeals. Notwithstanding any other provision of this code to  
10 the contrary, the procedure established in article two, chapter  
11 six-c of this code is the exclusive mechanism for hearing  
12 prospective employee grievances and appeals;

13       ~~(l)~~ (m) Solicit and use or expend voluntary support, including  
14 financial contributions and support services, for the institution  
15 under its jurisdiction;

16       ~~(m)~~ (n) Appoint a president for the institution under its  
17 jurisdiction subject to ~~the provisions of~~ section six, article one-  
18 b of this chapter;

19       ~~(n)~~ (o) Conduct written performance evaluations of the  
20 president pursuant to section six, article one-b of this chapter;

21       ~~(o)~~ (p) Employ all faculty and staff at the institution under  
22 its jurisdiction. The employees operate under the supervision of  
23 the president, but are employees of the governing board;

24       ~~(p)~~ (q) Submit to the commission or council, as appropriate,

1 ~~no later than the first day of November of each year an annual~~  
2 ~~report of the performance of the institution under its jurisdiction~~  
3 ~~during the previous fiscal year as compared to established state~~  
4 ~~goals, objectives, and priorities, and goals stated in its master~~  
5 ~~plan and institutional compact~~ any data or reports requested within  
6 the time frame set by the commission or council;

7       ~~(q)~~ (r) Enter into contracts or consortium agreements with the  
8 public schools, private schools or private industry to provide  
9 technical, vocational, college preparatory, remedial and customized  
10 training courses at locations either on campuses of the public  
11 institution of higher education or at off-campus locations in the  
12 institution's responsibility district. To accomplish this goal,  
13 the governing boards may share resources among the various groups  
14 in the community;

15       ~~(r)~~ (s) Provide and transfer ~~funding~~ funds and property to  
16 certain corporations pursuant to section ten, article twelve of  
17 this chapter;

18       ~~(s)~~ (t) Delegate, with prescribed standards and limitations,  
19 the part of its power and control over the business affairs of the  
20 institution to the president in any case where it considers the  
21 delegation necessary and prudent in order to enable the institution  
22 to function in a proper and expeditious manner and to meet the  
23 requirements of its master plan and ~~institutional~~ compact. If a  
24 governing board elects to delegate any of its power and control

1 under ~~the provisions of~~ this subsection, it shall enter the  
 2 delegation in the minutes of the meeting when the decision was made  
 3 and shall notify the commission or council, as appropriate. Any  
 4 delegation of power and control may be rescinded by the appropriate  
 5 governing board, the commission or council, as appropriate, at any  
 6 time, in whole or in part; except that the commission may not  
 7 revoke delegations of authority made by the governing ~~boards~~ board  
 8 of Marshall University or West Virginia University. ~~as they relate~~  
 9 ~~to the state institutions of higher education known as Marshall~~  
 10 ~~University and West Virginia University;~~

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

20       ~~(u)~~ (v) Consult, cooperate and ~~work~~ coordinate with the State  
 21 Treasurer and the State Auditor to update as necessary and maintain  
 22 an efficient and cost-effective system for the financial management  
 23 and expenditure of ~~special~~ appropriated and nonappropriated revenue  
 24 ~~and appropriated state funds~~ at the institution under its

1 jurisdiction. ~~that ensures~~ The system shall ensure that properly  
2 submitted requests for payment ~~be~~ are paid on or before the due  
3 date but, in any event, within fifteen days of receipt in the State  
4 Auditor's Office;

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

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

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

1       ~~(w)~~ (x) Notwithstanding any other provision of this code to  
2 the contrary, transfer funds from any account specifically  
3 appropriated for its use to any corresponding line item in a  
4 general revenue account at any agency or institution under its  
5 jurisdiction as long as ~~such~~ the transferred funds are used for the  
6 purposes appropriated;

7       ~~(x)~~ (y) Transfer funds from appropriated special revenue  
8 accounts for capital improvements under its jurisdiction to special  
9 revenue accounts at agencies or institutions under its jurisdiction  
10 as long as ~~such~~ the transferred funds are used for the purposes  
11 appropriated in accordance with article nineteen of this chapter;

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

20       ~~(z)~~ (aa) Contract and pay for disability insurance for a class  
21 or classes of employees at a state institution of higher education  
22 under its jurisdiction.

23 **§18B-2A-8. Additional powers and duties of governing boards.**

24       (a) The governing board of a state institution of higher

1 education is granted the additional powers and assigned the  
 2 associated duties ~~and authorities~~ pursuant to this section  
 3 previously granted and assigned to ~~the state institutions of higher~~  
 4 ~~education known as~~ the governing boards of Marshall University and  
 5 West Virginia University, ~~subject to the following: if~~

6 ~~(1) The institutional operating budgets of all institutions to~~  
 7 ~~which this section applies have achieved a level of funding~~  
 8 ~~comparable with, but not less than ninety percent of, their~~  
 9 ~~respective peers, as established pursuant to section three, article~~  
 10 ~~one-a of this chapter;~~ (2) the commission or council, as  
 11 appropriate, approves granting the powers and assigning the duties  
 12 ~~and authorities~~ to that institution governing board. ~~and~~

13 ~~(3) The powers, duties and authorities may not be granted to~~  
 14 ~~any institution prior to the first day of July, two thousand~~  
 15 ~~twelve.~~

16 (b) The powers and duties ~~and authorities~~ that may be granted  
 17 and assigned pursuant to this section are ~~those provided in the~~  
 18 following:

19 ~~(1) Section four-a, article six, chapter five of this code;~~

20 ~~(2) Section two, article one, chapter five-g of this code;~~

21 ~~(3) Section twelve-b, article one, chapter twelve of this~~  
 22 ~~code;~~

23 ~~(4)~~ (1) Sections five, six and seven, ~~and eight,~~ article  
 24 three, chapter twelve of this code;

1       ~~(5) Sections three and six, article one of this chapter;~~  
2       ~~(6) Section two, article one a of this chapter;~~  
3       ~~(7) Section four, article one b of this chapter;~~  
4       ~~(8) Sections three and four of this article;~~  
5       ~~(9) (2) Sections Section two and three, article three of this~~  
6 chapter;  
7       ~~(10) (3) Sections five, ~~five a,~~ six and seven, article four of~~  
8 this chapter;  
9       ~~(11) (4) Sections ~~three, four,~~ Section seven and nine, article~~  
10 five of this chapter; and  
11       ~~(12) (5) Sections one and Section six-a, article ten of this~~  
12 chapter.  
13       ~~(c) This section does not apply to any community and technical~~  
14 college.  
15       (c) Additional powers and duties related to purchasing -- The  
16 powers and duties granted and assigned to the governing boards of  
17 Marshall University and West Virginia University by section four,  
18 article five of this chapter are extended to the governing boards  
19 of all other state institutions of higher education under the  
20 following conditions:  
21       (1) The commission and council shall conduct a study to  
22 determine the capacity of each governing board under their  
23 respective jurisdictions to implement the additional powers and  
24 carry out the additional assigned duties related to purchasing;

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

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

10       (d) The commission and council have the power and the duty to  
 11 monitor participation and provide technical assistance, as  
 12 requested or required, to governing boards under their respective  
 13 jurisdictions and to limit or rescind exercise of the powers, in  
 14 whole or in part, granted by this section to a governing board if,  
 15 in the sole determination of the commission or council, as  
 16 appropriate, that action is warranted.

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

19 **§18B-2B-3.    West Virginia council for community and technical**  
 20 **college education; supervision of chancellor;**  
 21 **chief executive officer.**

22       (a) There is continued the West Virginia council for community  
 23 and technical college education. The council has all the powers  
 24 and duties assigned by law to the joint commission for vocational--

1 technical-occupational education prior to ~~the effective date of~~  
2 ~~this section~~ July 1, 2001, and ~~such~~ all other powers and duties ~~as~~  
3 ~~may be~~ assigned by law.

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

13 ~~(1) The vice chancellor for community and technical college~~  
14 ~~education and workforce development, as the current chief executive~~  
15 ~~officer of the council, shall continue in such capacity upon the~~  
16 ~~effective date of this section, and shall be the chancellor for~~  
17 ~~community and technical college education.~~

18 ~~(A) The council shall conduct a written performance evaluation~~  
19 ~~of the chancellor one year after the effective date of this~~  
20 ~~section. The council shall report the results of the evaluation to~~  
21 ~~the Legislative Oversight commission on education accountability~~  
22 ~~during the legislative interim meeting period following the~~  
23 ~~evaluation.~~

24 ~~(B) After reviewing the evaluation, the council shall make a~~

1 ~~determination by vote of its members on continuing employment and~~  
2 ~~compensation level for the chancellor.~~

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

10 ~~(D)~~ (d) When a vacancy occurs in the position of chancellor,  
11 the council shall enter into an initial employment contract for one  
12 year with the candidate selected to fill the vacancy. At the end  
13 of the initial period, and each contract period thereafter, the  
14 council shall ~~make a determination by vote of its members on~~  
15 ~~continuing employment and compensation level for the chancellor and~~  
16 ~~shall continue thereafter as set forth in paragraph (C) of this~~  
17 ~~subdivision~~ review the evaluations and make a determination by vote  
18 of its members on continuing employment and compensation level for  
19 the chancellor.

20 (2) (e) The chancellor individual who was serving as Vice  
21 Chancellor for Community and Technical College Education and  
22 Workforce Development and who became chancellor effective March 13,  
23 2004, maintains all benefits of employment held, accrued and  
24 afforded as the Vice Chancellor for Community and Technical College

1 Education and Workforce Development prior to March 13, 2004, Such  
 2 These benefits include, but are not limited to, retirement  
 3 benefits, continued membership in the same retirement system, ~~any~~  
 4 insurance coverage and sick and annual leave. For the purposes of  
 5 leave conversion established in section thirteen, article sixteen,  
 6 chapter five of this code, the chancellor is not a new employee and  
 7 the prohibition on conversion does not apply if the chancellor was  
 8 eligible for leave conversion while serving as vice chancellor. ~~on~~  
 9 ~~the day preceding the effective date of this section. On the~~  
 10 ~~effective date of this section for the purpose of section thirteen,~~  
 11 ~~article sixteen, chapter five of this code, the chancellor:~~

12       ~~(A) Maintains all sick and annual leave accrued, and all~~  
 13 ~~rights to convert the leave that had been accrued as vice~~  
 14 ~~chancellor; and~~

15       ~~(B) Continues to maintain his or her status for eligibility~~  
 16 ~~under the provisions and application of said section as applied~~  
 17 ~~while serving as vice chancellor on the day preceding the effective~~  
 18 ~~date of this section.~~

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

20 **§18B-3-1. Legislative findings, purpose; intent; definition.**

21       (a) The Legislature finds that an effective and efficient  
 22 system of doctoral-level education is vital to providing for the  
 23 economic well-being of the citizens of West Virginia and for  
 24 accomplishing established state goals and objectives. As the only

1 research and doctoral-granting public universities in the state,  
2 Marshall University and West Virginia University are major assets  
3 to the citizens of West Virginia and must be an integral part of  
4 any plan to strengthen and expand the economy.

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

11 (c) The Legislature further finds that Marshall University and  
12 West Virginia University, under the direction of their respective  
13 governing boards, ~~have sufficient staff and internal expertise to~~  
14 may manage operational governance of their institutions in an  
15 efficient and accountable manner and ~~can~~ may best fulfill their  
16 public missions when their governing boards are given flexibility  
17 and autonomy sufficient to meet state goals, objectives and  
18 priorities established in this article, and in section one-a,  
19 article one and article one-d of this chapter.

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

22 (1) Enhancing the competitive position of Marshall University  
23 and West Virginia University in the current environment for  
24 research and development;

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

4 (3) Encouraging the development of research expertise in areas  
 5 directly beneficial to the state; ~~and~~

6 (4) Focusing the attention and resources of the governing  
 7 boards on state goals, objectives and priorities to enhance the  
 8 competitive position of the state and the economic, social and  
 9 cultural well-being of its citizens; and

10 (5) Providing additional autonomy and operational flexibility  
 11 and assigning certain additional responsibilities to governing  
 12 boards of other state institutions of higher education.

13 ~~(e) The following terms wherever used or referred to in this~~  
 14 ~~chapter have the following meaning, unless a different meaning~~  
 15 ~~plainly appears from the context:~~

16 ~~(1) "State institution of higher education known as Marshall~~  
 17 ~~University" means the doctoral-granting research institution and~~  
 18 ~~does not include Marshall Community and Technical College; and~~

19 ~~(2) "State institution of higher education known as West~~  
 20 ~~Virginia University" means the doctoral-granting research~~  
 21 ~~institution. and does not include any of the following:~~

22 ~~(A) The regional campus known as West Virginia University~~  
 23 ~~Institute of Technology;~~

24 ~~(B) The administratively linked institution known as the~~

1 ~~Community and Technical College at West Virginia University~~  
2 ~~Institute of Technology; and~~

3 ~~(C) The regional campus known as West Virginia University at~~  
4 ~~Parkersburg.~~

5 ~~(f)~~ (e) The governing boards of Marshall University and West  
6 Virginia University each have the power and the obligation to  
7 perform functions, tasks and duties as prescribed by law and to  
8 exercise their authority and carry out their responsibilities in a  
9 manner that is consistent with and not in conflict with the powers  
10 and duties assigned by law to the ~~West Virginia~~ council for  
11 ~~Community and Technical College Education~~ and the Higher Education  
12 ~~Policy~~ commission.

13 ~~(g)~~ (f) While the governing boards of ~~Marshall University and~~  
14 ~~West Virginia University, respectively,~~ may choose to delegate  
15 powers and duties to the their respective presidents of the state  
16 ~~institutions of higher education known as Marshall University and~~  
17 ~~West Virginia University~~ pursuant to subsection (s), section four,  
18 article two-a of this chapter, ultimately, it is they who are  
19 accountable to the Legislature, the Governor and the citizens of  
20 West Virginia for meeting the established state goals, objectives  
21 and priorities set forth in this article, and in section one-a,  
22 article one and article one-d of this chapter. Therefore, ~~it is~~  
23 ~~the intent of the Legislature that~~ grants of operational  
24 flexibility and autonomy ~~be~~ are made directly to the governing

1 boards and are not grants of operational flexibility and autonomy  
 2 to the ~~presidents~~ president of ~~these institutions~~ an institution.

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

5 (a) *Relationship between the commission and the governing*  
 6 *boards. --*

7 (1) The commission functions as a state-level coordinating  
 8 board exercising its powers and duties in relation to the governing  
 9 boards ~~of Marshall University and West Virginia University only~~ as  
 10 ~~specifically~~ prescribed by law;

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

16 (3) The commission has specific ~~responsibilities~~ powers and  
 17 duties which include, but are not limited to, the following:

18 (A) Advocating for public higher education at the state level;  
 19 ~~and~~

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

23 ~~(B)~~ (C) Collecting and analyzing data, researching, developing  
 24 recommendations, and advising the Legislature and the Governor on

1 broad policy initiatives, use of incentive funding, national and  
2 regional trends in higher education and issues of resource  
3 allocation involving multiple governing boards.

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

5 -- (1) The council maintains all powers and duties assigned to it  
6 by law or policy rule relating to ~~the institution known as Marshall~~  
7 ~~Community and Technical College, the administration known as The~~  
8 ~~Community and Technical College at West Virginia University~~  
9 ~~Institute of Technology and the institution known as West Virginia~~  
10 ~~University at Parkersburg~~ community and technical colleges as  
11 defined in section two, article one of this chapter;

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

24 (c) The governing boards shall work collaboratively with the

1 commission, the council and their staff to provide ~~any and~~ all  
 2 information requested by the commission or the council in an  
 3 appropriate format and in a timely manner.

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

5 ~~(a)~~ The expertise of faculty and graduate students at ~~the~~  
 6 state institutions of higher education ~~known as Marshall University~~  
 7 ~~and West Virginia University~~ is important to every citizen of this  
 8 state. It is the responsibility of the governing boards to channel  
 9 this expertise into research and analysis that will yield  
 10 measurable benefits to the citizens of West Virginia. Therefore,  
 11 in addition to the goals, ~~for post-secondary education~~ objectives  
 12 and priorities established in section one-a, article one and  
 13 article one-d of this chapter and goals established elsewhere in  
 14 this code, it is the responsibility of the governing boards ~~in~~  
 15 ~~collaboration~~ to concentrate attention and resources on certain  
 16 specific state priorities that have a direct, positive impact on  
 17 the economic, social and cultural well-being of the people of West  
 18 Virginia. ~~These priorities include, but are not limited to, the~~  
 19 ~~following:~~

20 (a) Priorities for Marshall University and West Virginia  
 21 University in collaboration:

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

24 (2) Performing professional development-related research and

1 coordinating the delivery of professional development to educators  
2 in the public schools of the state pursuant to ~~the provisions of~~  
3 article two, chapter eighteen of this code; and

4 (3) Building subject matter expertise in public ~~school~~  
5 education finance, including mastery of the theories and concepts  
6 used in developing formulas to provide state-level financial  
7 support to public education. ~~and~~

8 ~~(4) Researching and proposing cost-efficient methods to the~~  
9 ~~Legislature for governing boards other than Marshall University and~~  
10 ~~West Virginia University to dispose of obsolete computers and~~  
11 ~~computer-related equipment.~~

12 (b) The Legislature may, but is not required to, make  
13 additional appropriations for the benefit of ~~the state institutions~~  
14 ~~of higher education known as~~ Marshall University and West Virginia  
15 University to assist them in fulfilling the purposes set forth in  
16 subsection (a) of this section.

17 (c) Additional priorities for governing boards:

18 ~~(c)~~ (d) In addition to the priorities established in  
19 subsection (a) of this section, each governing board under the  
20 jurisdiction of the commission ~~separately~~ shall focus resources and  
21 attention on improving ~~their~~ its graduation ~~rates~~ rate for full-  
22 time undergraduate students as a specific institutional priority.  
23 The graduation rate is measured as a percentage of the number of  
24 undergraduate students who obtain a degree within six years of the

1 date of enrollment as full-time freshmen. ~~The governing boards~~  
2 ~~shall develop and implement plans to reach the following goals:~~

3 ~~(1) Marshall University shall attain a graduation rate for~~  
4 ~~full-time undergraduate students of forty percent by the first day~~  
5 ~~of July, two thousand eight, and shall attain a graduation rate for~~  
6 ~~full-time undergraduate students of forty-five percent by July 1,~~  
7 ~~2010.~~

8 ~~(2) West Virginia University shall attain a graduation rate~~  
9 ~~for full-time undergraduate students of sixty percent by the first~~  
10 ~~day of July, two thousand eight, and shall attain a graduation rate~~  
11 ~~for full-time undergraduate students of sixty-three percent by July~~  
12 ~~1, 2010.~~

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

20 (3) The commission shall monitor and report annually by  
21 December 1, 2005, ~~and annually thereafter,~~ to the Legislative  
22 Oversight Commission on Education Accountability on the progress of  
23 the governing boards toward meeting the goals set forth in  
24 ~~subdivisions (1) and (2) of this subsection.~~

1 **ARTICLE 4. GENERAL ADMINISTRATION.**

2 **§18B-4-1. Employment of chancellors; designation of staff;**  
3 **offices.**

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

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

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

12 (3) Each chancellor ~~is responsible for carrying~~ shall carry  
13 out the directives of the body by whom employed and shall ~~work~~  
14 collaborate with that body in developing policy options.

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

1 provided under the general supervision of the Vice Chancellor for  
2 Administration.

3 (5) For the purpose of developing or evaluating policy  
4 options, the chancellors may request the assistance of the  
5 presidents and staff ~~of the institutions~~ employed by the governing  
6 boards under their respective jurisdictions.

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

13 ~~(c) The Vice Chancellor for Health Sciences shall coordinate~~  
14 ~~the West Virginia University School of Medicine, the Marshall~~  
15 ~~University School of Medicine and the West Virginia School of~~  
16 ~~Osteopathic Medicine.~~

17 ~~(d)~~ (c) Suitable offices for the Vice Chancellor of  
18 Administration, the Vice Chancellor for Human Resources and other  
19 staff shall be provided in Kanawha County.

20 **§18B-4-2a. Employment of vice chancellor for human resources;**  
21 **powers and duties generally; staff; office.**

22 (a) By and with the advice and consent of the council for  
23 community and technical college education, the commission shall  
24 employ a Vice Chancellor for Human Resources who may not be

1 dismissed without the consent of the council. The person employed  
2 as senior director of human resources by the commission on January  
3 1, 2011, becomes the Vice Chancellor for Human Resources on the  
4 effective date of this section. Thereafter, any vacancy occurring  
5 in this position shall be filled in accordance with this section.

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

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

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

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

1 development, implementation and administration of the personnel  
2 system established by this chapter and by duly promulgated rules.

3 (d) The Vice Chancellor supervises the professional,  
4 administrative, clerical and other employees necessary to carry out  
5 assigned powers and duties. In consultation with the Vice  
6 Chancellor for Administration and the chancellors, the Vice  
7 Chancellor shall delineate staff responsibilities as considered  
8 desirable and appropriate.

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

14 (1) Developing and implementing business-related initiatives  
15 involving organizational design, labor cost management, executive  
16 recruitment and compensation, leadership and management  
17 development, human resources data and technology, and compensation  
18 and benefits programs;

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

22 (3) Assuming responsibility for coordinating compensation and  
23 benefits programs for all employees, including designing these  
24 programs, and for supporting each higher education organization in

1 implementing the programs;

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

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

11       (6) Ensuring that market comparison studies are conducted for  
12 each class of employees and providing a report annually to each  
13 organization on the status of relative market equity among the  
14 employee classifications.

15       (7) Carrying out the following duties related to training and  
16 development:

17       (A) Analyzing and determining training needs of organization  
18 employees and formulating and developing plans, procedures and  
19 programs to meet specific training needs and problems. Successful  
20 completion of these tasks requires the vice chancellor to work  
21 closely with and communicate regularly with the training and  
22 development coordinators employed by each organization;

23       (B) Developing, constructing, maintaining and revising  
24 training manuals and training aids or supervising development of

1 these materials by outside suppliers;

2 (C) Planning, conducting, and coordinating management  
3 inventories, appraisals, placement, counseling and training;

4 (D) Coordinating participation by all employees in training  
5 programs developed internally or provided by outside contractors;  
6 and

7 (E) Administering and analyzing an annual training and  
8 development needs survey. The survey may coincide with the  
9 completion of the annual performance review process.

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

18 (f) To assist in performing the duties of vice chancellor, the  
19 commission, with the consent of the council, shall employ a  
20 generalist/manager who is well qualified in the field of human  
21 resources. The position reports to the Vice Chancellor for Human  
22 resources and shall be filled on a permanent basis by September 1,  
23 2011. The successful candidate is responsible for a wide range of  
24 human resources management, reporting and development activities

1 and works collaboratively with governing boards and their employees  
2 at all levels.

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

4 **§18B-5-9. Higher education fiscal responsibility.**

5 (a) The governing boards ~~of Marshall University and West~~  
6 ~~Virginia University each~~ shall ensure the fiscal integrity of ~~its~~  
7 their operations using best business and management practices.

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

9 (A) Complying with Generally Accepted Accounting Principles of  
10 the Governmental Accounting Standards Board (GAMP); and the  
11 Generally Accepted Government Auditing Standards of the Government  
12 Accountability Office (GAGA);

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

16 (C) Maintaining annual audited financial statements with an  
17 unqualified opinion;

18 (D) ~~Presenting~~ Preparing annual audited financial statements  
19 ~~to the respective governing board as coordinated and directed by~~  
20 the commission and council, respectively, and as the commission  
21 requires to complete the higher education fund audit;

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

24 (F) Implementing best practices from Sarbanes-Oxley, or

1 adopting the applicable tenets of Sarbanes-Oxley as best practices.

2       (2) ~~Marshall University, West Virginia University~~ Each  
3 governing board and ~~the~~ any affiliated research corporation of each  
4 ~~(A)~~ shall comply with the OMB Circular A-133 annual grant award  
5 audit requirements and ~~(B) is~~ are exempt from ~~the provisions of~~  
6 section fourteen, article four, chapter twelve of this code.

7       (3) Within thirty days of the completion of the financial  
8 audit report, the governing boards ~~of Marshall University and West~~  
9 ~~Virginia University~~ each shall furnish to the commission or  
10 council, respectively, ~~the Legislative Oversight Commission on~~  
11 ~~Education Accountability and the Joint Committee on Government and~~  
12 ~~Finance~~ copies of the annual audited financial statements.

13       (b) The commission ~~or~~ and council, ~~as appropriate~~ each, shall  
14 ensure the fiscal integrity of any electronic process conducted at  
15 its offices and ~~at all other institutions using~~ by the governing  
16 boards under its respective jurisdiction by applying best business  
17 and management practices.

18       (c) ~~Marshall University, West Virginia University~~ the council  
19 ~~and the commission~~ To the maximum extent practicable, each higher  
20 education organization shall ~~implement a process whereby, to the~~  
21 ~~maximum extent practicable,~~ provide for its employees of Marshall  
22 ~~University, West Virginia University, the Council, Commission and~~  
23 ~~all other state institutions of higher education~~ to receive their  
24 wages via electronic transfer or direct deposit.

1           (d) Notwithstanding ~~the provisions of section ten-a, article~~  
2 ~~three, chapter twelve of this code, and except as otherwise~~  
3 ~~provided in this subsection, the amount of any purchase made with~~  
4 ~~any other provision of this code to the contrary,~~ a purchasing card  
5 may be used by the council, the commission or any other a governing  
6 board of a state institution of higher education may not exceed  
7 five thousand dollars to make any payment authorized by the  
8 Auditor, including regular routine payments and travel and  
9 emergency payments. Payments are set at an amount to be determined  
10 by the Auditor.

11           (1) Subject to approval of the Auditor, ~~any~~ an emergency  
12 payment and ~~any~~ a routine, regularly scheduled payment, including,  
13 but not limited to, utility payments, contracts and real property  
14 rental fees, may exceed this limit by an amount to be determined by  
15 the Auditor.

16           (2) The council, commission and ~~any~~ a governing board of a  
17 state institution of higher education may use a purchasing card for  
18 travel expenses directly related to the job duties of the traveling  
19 employee. Where approved by the Auditor, ~~such~~ the expenses may  
20 exceed \$5000 by an amount to be determined by the Auditor.  
21 Traveling expenses may include registration fees and airline and  
22 other transportation reservations, if approved by the president of  
23 the institution. Traveling expenses may ~~not include fuel or food~~  
24 ~~purchases except, the state institutions of higher education known~~

1 ~~as Marshall University and West Virginia University may include in~~  
2 ~~traveling expenses the purchase~~ purchases of fuel and food.

3 (3) The commission, council, and governing boards ~~state~~  
4 ~~institutions known as Marshall University and West Virginia~~  
5 ~~University~~ each shall maintain one purchasing card for use only in  
6 a situation declared an emergency by the appropriate chancellor or  
7 the institution's president. ~~The Council, Commission and all other~~  
8 ~~institutions shall maintain one purchase card for use only in a~~  
9 ~~situation declared an emergency by the president of the institution~~  
10 ~~and approved by the appropriate chancellor.~~ Emergencies may  
11 include, but are not limited to, partial or total destruction of a  
12 ~~campus~~ facility; loss of a critical component of utility  
13 infrastructure; heating, ventilation or air condition failure in an  
14 essential academic building; loss of campus road, parking lot or  
15 campus entrance; or a local, regional, or national emergency  
16 situation that has a direct impact on the campus.

17 (e) Notwithstanding ~~the provisions of~~ section ten-f, article  
18 three, chapter twelve of this code, or any other provision of this  
19 code or law to the contrary, the Auditor shall accept any receiving  
20 report submitted in a format utilizing electronic media. The  
21 Auditor shall conduct any audit or investigation of the council,  
22 commission or ~~any institution~~ governing board at its own expense  
23 and at no cost to the council, commission or ~~institution~~ governing  
24 board.

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

- 7 (1) Bulk purchasing;
- 8 (2) Reverse bidding;
- 9 (3) Electronic marketplaces; and
- 10 (4) Electronic remitting.

11 (g) Each ~~institution~~ governing board ~~shall~~ may establish a  
12 consortium with at least one other ~~institution~~ governing board, in  
13 the most cost-efficient manner feasible, to consolidate the  
14 following operations and student services:

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

24 (h) ~~An institution~~ A governing board may charge a fee to the

1 governing board of each institution for which it provides a service  
2 or performs an operation. The fee rate shall be in the best  
3 interest of both the institution being served and the governing  
4 board providing institution the service. ~~as approved by the council~~  
5 ~~and commission.~~

6 (i) ~~Any community and technical college, college and~~  
7 ~~university~~ A governing board may provide the services authorized by  
8 this section for the benefit of any governmental body or public or  
9 private institution.

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

17 (k) ~~An institution~~ A governing board shall use its natural  
18 resources and alternative fuel resources to the maximum extent  
19 feasible. The ~~institution~~ governing board:

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

22 (2) May supply the resources to the general public at fair  
23 market value;

24 (3) Shall maximize all federal or grant funds available for

1 research regarding alternative energy sources; and

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

5 (1) Any cost-savings realized or fee procured or retained by  
6 ~~an institution~~ a governing board pursuant to ~~implementation of the~~  
7 ~~provisions of this section~~ is retained by the ~~institution~~ governing  
8 board.

9 (m) ~~The provisions of subsection (b) of this section do not~~  
10 ~~apply to the state institutions known as Marshall University and~~  
11 ~~West Virginia University.~~ Each governing board is authorized, but  
12 not required, to ~~comply with the provisions of~~ implement  
13 subsections (f), (g) and (h) of this section.

14 ~~(1) The governing boards of Marshall University and West~~  
15 ~~Virginia University, respectively, each shall promulgate a rule on~~  
16 ~~purchasing procedures pursuant to the provisions of section six,~~  
17 ~~article one of this chapter. Neither institution is subject to the~~  
18 ~~rules required by subsection (f) of this section.~~

19 ~~(2) If either~~ a governing board elects to implement ~~the~~  
20 ~~provisions of said~~ subsection (g) of this section, the following  
21 conditions apply:

22 ~~(A)~~ (1) The governing board makes the determination regarding  
23 any additional operation or service which is appropriate for  
24 consolidation without input from the council or commission;

1       ~~(B)~~ (2) The governing board sets the fee charged to ~~any~~ the  
 2 governing board of the institution for which it provides a service  
 3 or performs an operation. The fee rate shall be in the best  
 4 interest of both the institution being served and the governing  
 5 board providing ~~institution the service but it and~~ is not subject  
 6 to approval by the council or commission; and

7       ~~(C)~~ (3) The governing board may not implement ~~the provisions~~  
 8 ~~of~~ this subdivision in a manner which supercedes the requirements  
 9 established in section twelve, article three-c of this chapter.

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

14 **ARTICLE 7. PERSONNEL GENERALLY.**

15 **§18B-7-1. Legislative intent and purpose.**

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

20       (1) Providing benefits to the citizens of the State of West  
 21 Virginia by supporting the public policy agenda as articulated by  
 22 state policymakers;

23       (2) Assuring fiscal responsibility by making the best use of  
 24 scarce resources;

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

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

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

10          (6) Providing for institutional flexibility with meaningful  
11 accountability;

12          (7) Adhering to federal and state laws;

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

14          (9) Implementing best practices throughout the state higher  
15 education system.

16          (b) To accomplish these goals, the Legislature encourages  
17 organizations to pursue a human resources strategy which provides  
18 monetary and nonmonetary returns to employees in exchange for their  
19 time, talents and efforts to meet articulated goals, objectives and  
20 priorities of the state, the commission and council, and the  
21 organization. The system should maximize the recruitment,  
22 motivation and retention of highly qualified employees, ensure  
23 satisfaction and engagement of employees with their jobs, ensure  
24 job performance and achieve desired results.

1 **§18B-7-2. Definitions.**

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

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

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

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

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

22 (e) "Health and welfare benefit plan" means an arrangement  
23 which provides any of the following: Medical, dental, visual,  
24 psychiatric or long-term health care, life insurance, accidental

1 death or dismemberment benefits, disability benefits or comparable  
2 benefits.

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

7 (g) "Relative market status" means the calculated relationship  
8 between the average salary of each employee classification and its  
9 peer group.

10 **§18B-7-3. Seniority for full-time classified personnel; seniority**  
11 **to be observed in reducing workforce; preferred**  
12 **recall list; renewal of listing; notice of vacancies.**

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

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

22 (2) Who is transferred involuntarily to a position in  
23 nonclassified status for which he or she did not apply. Any  
24 classified employee involuntarily transferred to a position in

1 nonclassified status may exercise the rights set out in this  
2 section only for positions equivalent to or lower than the last job  
3 class the employee held.

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

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

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

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

23 (c) Each employee laid off during a furlough or reduction in  
24 workforce is placed upon a preferred recall list and is recalled to

1 employment by the organization on the basis of seniority.

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

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

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

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

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

22       (2) A position opening may not be filled by the organization,  
23 whether temporary or permanent, until all employees on the  
24 preferred recall list have been properly notified of existing

1 vacancies and have been given an opportunity to accept  
2 reemployment.

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

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

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

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

24 (f) In addition to any other information required,

1 applications for employment by personnel governed by this section  
2 shall include each applicant's social security number.

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

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

8 (2) An employee at an organization under the jurisdiction of  
9 the commission may not displace an employee of an organization  
10 under the jurisdiction of the council.

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

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

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

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

1 plan.

2 **§18B-7-5. Supplemental and additional retirement plans for**  
3 **employees; payroll deductions; authority to match**  
4 **employee contributions; retroactive curative and**  
5 **technical corrective action.**

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

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

22 (c) The commission, council and governing boards may contract  
23 for supplemental retirement plans for any or all of their employees  
24 to supplement the benefits employees otherwise receive. The

1 commission, council and governing boards may make additional  
2 periodic deductions from the salary payments due the employees in  
3 the amount they are required to contribute for the supplemental  
4 retirement plan.

5 (d) An organization, by way of additional compensation to  
6 their employees, shall pay an amount, which, at a minimum, equals  
7 the contributions of the employees into the higher education  
8 retirement plan from funds appropriated to the commission, council  
9 or governing board for personal services.

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

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

23 (g) Any person whose employment commences on or after July 1,  
24 1991, and who is eligible to participate in the Higher Education

1 Retirement Plan, shall participate in that plan and is not eligible  
2 to participate in any other state retirement system: *Provided,*  
3 That the foregoing provision does not apply to a person designated  
4 as a 21st Century Learner Fellow pursuant to section eleven,  
5 article three, chapter eighteen-a of this code. The additional  
6 retirement plan contracted for by the governing boards prior to  
7 July 1, 1991, remains in effect unless changed by the commission.  
8 Nothing in this section considers employees of the council or  
9 governing boards as employees of the commission, nor is the  
10 commission responsible or liable for retirement benefits contracted  
11 by, or on behalf of, the council or governing boards.

12 **§18B-7-6. Continuing education and professional development.**

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

22 The rules shall encourage continuing education and staff  
23 development and shall require that employees be selected on a  
24 nonpartisan basis using fair and meaningful criteria which afford

1 all employees opportunities to enhance their skills. These rules  
2 also may include reasonable provisions for the continuation or  
3 return of any faculty or classified employee receiving the benefits  
4 of the education or training, or for reimbursement by the state for  
5 expenditures incurred on behalf of the faculty member or classified  
6 employee.

7 (b) Subject to legislative appropriation therefor, the  
8 commission and council shall provide additional, regular, training  
9 and professional development for employees engaged in human  
10 resources-related activities at all organizations. The training  
11 and professional development:

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

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

18 **§18B-7-7. Employment practices.**

19 (a) Each governing board, with the advice and assistance of  
20 the staff council, shall promulgate and adopt a rule regarding the  
21 role of part-time classified employees. The rule shall discourage  
22 the hiring of part-time employees solely to avoid the payment of  
23 benefits or in lieu of full-time employees and shall provide all  
24 qualified classified employees who hold nine-month or ten-month

1 contracts with the opportunity to accept part-time or full-time  
2 summer employment before new persons are hired for the part-time or  
3 full-time employment.

4 (b) Each governing board, with the advice and assistance of  
5 the staff councils and other groups representing classified  
6 employees, shall promulgate and adopt a rule in accordance with  
7 section six, article one of this chapter that discourages  
8 temporary, nonemergency, institutionally-imposed changes in an  
9 employee's work schedule; that maintains reasonable continuity in  
10 working schedules and conditions for employees; and that requires  
11 institutions to consider feasible and innovative ways to use the  
12 institution's classified employees most efficiently. These  
13 innovations may include, but are not limited to, flexibility in  
14 employee scheduling, job-sharing and four-day work weeks.

15 **§18B-7-8. Reporting.**

16 (a) *Implementation reports.* --

17 For the fiscal years commencing on July 1, 2011, and July 1,  
18 2012, the commission and council jointly shall report to the  
19 Legislative Oversight Commission on Education Accountability once  
20 during each six-month period on their progress in designing,  
21 developing, implementing and administering the personnel  
22 classification and compensation system established by this article  
23 and articles eight, nine and nine-a of this chapter. The initial  
24 report is due December 1, 2011, and shall include, but is not

1 limited to, the following information:

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

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

6       (3) A systematic plan, including a time line, for designing,  
7 developing, and implementing the classification and compensation  
8 system contained in this article and articles eight, nine and nine-  
9 a of this chapter;

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

12       (5) An assessment of progress made by the governing boards  
13 toward achieving full funding of the temporary classified  
14 employees' salary schedule pursuant to section three, article nine  
15 of this chapter;

16       (6) Detailed data disaggregated by organization and employee  
17 category or classification, comparing funding for salaries of  
18 faculty, classified employees and nonclassified employees as a  
19 percentage of the average funding for each of these classes or  
20 categories of employees among the organization's peers, in regional  
21 or national markets, as appropriate, and among similar  
22 organizations within the state systems of public higher education;  
23 and

24       (7) Other data requested by the Legislature or considered

1 appropriate by the commission or council.

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

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

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

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

18 (2) The commission and council shall prepare a human resources  
19 report card summarizing the performance of organizations on key  
20 human resources measures. The report card shall be presented to  
21 the Legislative Oversight Commission on Education Accountability no  
22 later than December 1, 2012, and annually thereafter, and shall be  
23 made available to the general public. At a minimum, the human  
24 resources report card shall contain the following data:

1 (A) Human resources department metrics by organization:

2 (i) Number of human resources staff;

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

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

7 (iv) Number of positions reporting to the head of human  
8 resources;

9 (v) Areas of human resources functions outsourced to external  
10 entities;

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

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

13 (B) Human resources expense data:

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

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

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

18 (C) Compensation data:

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

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

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

1 (D) System metrics:

2 (i) Comparisons of faculty salaries at each organization to  
3 market averages;

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

6 (E) An account of the total amount, type of training or  
7 professional development provided, the number of employees who  
8 participated and the overall cost of the training and professional  
9 development provided to employees pursuant to section six of this  
10 article; and

11 (F) Other measures the commission or council considers  
12 appropriate to assist policymakers in evaluating the degree of  
13 success in implementing best human resources practices by higher  
14 education organizations.

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

16 (1) By July 1, 2014, and at least once within each five-year  
17 period thereafter, the commission and council jointly shall review  
18 the effectiveness of the system for classifying jobs and submit an  
19 in-depth report to the Legislative Oversight Commission on  
20 Education Accountability. The report shall include, but is not  
21 limited to, findings, recommendations and supporting documentation  
22 regarding the following job classification issues:

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

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

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

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

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

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

21 **§18B-7-9. Human resources reviews.**

22 (a) The commission and council jointly shall conduct an  
23 initial human resources review of each organization to be carried  
24 out, subject to legislative appropriation, by an external vendor

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

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

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

22 (2) In the absence of special circumstances, the commission  
23 and council shall provide organizations with reasonable notice  
24 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

1 the case may be, shall be paid overtime compensation for additional  
2 hours of work. If compensation is paid to an employee for accrued  
3 compensatory time, the compensation shall be paid at the regular  
4 rate earned by the employee at the time the employee received the  
5 payment.

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

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

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

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

20 **§18B-7-11. Employees designated as nonclassified; limits; reports**  
21 **required.**

22 (a) Notwithstanding any provision of this code to the  
23 contrary, by July 1, 2015, the percentage of personnel placed in  
24 the category of "nonclassified" at a higher education organization

1 may not exceed twenty percent of the total number of classified and  
2 nonclassified employees of that organization as those terms are  
3 defined in section two, article nine-a of this chapter and who are  
4 eligible for membership in a state retirement system of the State  
5 of West Virginia or other retirement plan authorized by the state,  
6 except as set forth in subsection (c) of this section.

7       (b) A higher education organization which has more than twenty  
8 percent of its employees placed in the category of "nonclassified"  
9 as defined by subsection (a) of this section on July 1, 2011, shall  
10 reduce the number of nonclassified employees to no more than  
11 twenty-five percent by July 1, 2013, and to no more than twenty  
12 percent by July 1, 2015.

13       (c) For the purposes of determining the ratio of nonclassified  
14 employees pursuant to this section, the following conditions apply:

15       (1) Employees of the commission and the chancellor for higher  
16 education and employees of the council and the chancellor for  
17 community and technical college education are considered as one  
18 organization;

19       (2) Organizations may count as faculty or classified  
20 employees, respectively, administrators who retain the right to  
21 return to faculty or classified employee positions;

22       (3) Athletic coaches are excluded from calculation of the  
23 ratio. The commission and the council shall include consideration  
24 of this employee category in each review required by section nine

1 of this article and shall monitor organizations' use of this  
2 category and include this information in the reports required by  
3 subsections (a) and (b), section eight of this article; and

4       (4) The governing board of Marshall University or West  
5 Virginia University may place up to twenty-five percent of the  
6 total number of classified and nonclassified employees of that  
7 organization in the category of "nonclassified" under the following  
8 conditions:

9       (A) The governing board of the institution votes to approve  
10 any percentage number above twenty percent; and

11       (B) The governing board seeks and receives the approval of the  
12 commission before increasing the total above twenty percent.

13       (d) The Vice Chancellor for Human Resources shall monitor the  
14 progress of the organizations in meeting the deadlines established  
15 in this section and shall report periodically to the commission and  
16 council. The commission and council shall make a preliminary  
17 compliance report to the Legislative Oversight Commission on  
18 Education Accountability by September 1, 2013, and a final report  
19 on organization compliance to that body by September 1, 2015.

20       (e) No nonclassified employee shall have his or her current  
21 annual salary reduced if his or her position is redefined as a  
22 classified position solely to meet the requirements of this  
23 section. If such a nonclassified employee is reclassified, his or  
24 her salary shall not constitute evidence of inequitable

1 compensation in comparison to other employees in the same paygrade.

2 **§18B-7-12. Additional employment by mutual agreement; agreement**  
3 **to be filed with governing board.**

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

16 **§18B-7-13. Probationary employment period; evaluation.**

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

24 **§18B-7-14. Higher education employees' catastrophic leave bank**

1                   **and leave transfer.**

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

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

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

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

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

1 council, as appropriate, if this results in the employee being  
2 required to take time off from work for an extended period of time  
3 to care for the family member and if the employee has exhausted all  
4 sick and annual leave and other paid time off.

5 (d) A leave bank or banks may be established at each state  
6 institution of higher education, the commission or the council to  
7 which employees may donate either sick or annual leave. The bank  
8 or banks may be established jointly by the policy commission and  
9 the governing boards or may be established for the commission, the  
10 council, and each of the governing boards. Sick or annual leave  
11 may be deposited in the leave bank, and shall be reflected as a  
12 day-for-day deduction from the sick or annual leave balance of the  
13 depositing employee.

14 Donated leave may be withdrawn by any employee experiencing a  
15 catastrophic illness or injury when the following conditions are  
16 met:

17 (1) The president of the institution or the chancellor of the  
18 commission or the council, as appropriate, verifies that the  
19 employee is unable to work due to the catastrophic illness or  
20 injury; and

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

24 The withdrawal shall be reflected as a day-for-day addition to

1 the leave balance of the withdrawing employee.

2       (e) Sick or annual leave may be donated to an employee  
3 experiencing a catastrophic illness or injury. The leave shall be  
4 donated at the request of the employee after appropriate  
5 verification that the employee is unable to work due to the  
6 catastrophic illness or injury as determined by the president of  
7 the institution or the appropriate chancellor. When transfer of  
8 sick or annual leave is approved by the president of the  
9 institution or the appropriate chancellor, any employee may donate  
10 sick or annual leave in one-day increments by providing written  
11 notice to the personnel office. Donations shall be reflected as a  
12 day-for-day deduction from the sick or annual leave balance of the  
13 donating employee. An employee receiving the donated sick or  
14 annual leave shall have any time which is donated credited to his  
15 or her account in one-day increments and reflected as a day-for-day  
16 addition to the leave balance of the receiving employee.

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

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

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

5           (g) Donated sick or annual leave deposited in an institutional  
6 leave bank or transferred under subsection (d) of this section may  
7 be inter-institutional in accordance with the policies of the  
8 appropriate governing board. Each institution, the commission or  
9 the council is responsible for the administration of the sick or  
10 annual leave deposits, withdrawals and transfers of its employees.  
11 Rules implementing the provisions of this section may be adopted  
12 jointly or separately by the governing boards, the commission or  
13 the council in accordance with section six, article one of this  
14 chapter and, in the case of the commission and council, in  
15 accordance with article three-a, chapter twenty-nine-a of this  
16 code.

17 **§18B-7-15. Merit increases.**

18           Higher education organizations may grant merit increases which  
19 are in accordance with this article and articles eight, nine and  
20 nine-a of this chapter and with duly promulgated rules of the  
21 commission and council.

22 **§18B-7-16. Study of employment practices.**

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

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

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

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

13           (A) A current database of outsourcing practices followed by  
14 each organization including procedures or rules developed to inform  
15 policy decisions;

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

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

22           (4) Recommending a rational, uniform policy to determine the  
23 status of employees whose positions are funded, in whole or in  
24 part, by an external grant or contract from a federal, state or

1 local government or a private entity.

2 (b) The commission and council shall complete the work and  
3 report their findings, conclusions and recommendations, together  
4 with drafts of any legislation necessary to effectuate the  
5 recommendations, to the Legislative Oversight Commission on  
6 Education Accountability no later than January 1, 2012.

7 **ARTICLE 8. HIGHER EDUCATION FACULTY.**

8 **§18B-8-1. Definitions.**

9 As used in this article:

10 (a) "Academic rank", "rank" or "faculty rank" means the  
11 position held by a faculty member as determined by the president,  
12 consistent with a rule promulgated and adopted by the governing  
13 board, and includes the positions of professor, associate  
14 professor, assistant professor and instructor. All other ranks are  
15 excluded from the provisions of this article.

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

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

24 **§18B-8-2. Faculty salary rules; salary increase upon promotion in**

1                   **rank.**

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

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

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

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

14           (2) Faculty are recognized for outstanding performance;

15           (3) Equity among salaries is maintained; and

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

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

20 **§18B-8-3. Authority to grant sabbatical leave.**

21          A governing board may grant sabbatical leave to a faculty  
22 member at the state institution of higher education under its  
23 jurisdiction for the purpose of permitting him or her to engage in  
24 graduate study, research or other activities calculated to improve

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

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

19 (a) Notwithstanding any provision of law to the contrary, a  
20 tenured professional at a state institution of higher education who  
21 is absent from duties at the institution to accept employment in a  
22 nonelected governmental capacity is afforded the benefits of  
23 academic tenure, rank and position as if he or she had remained  
24 continuously in the position retained and held at the institution

1 immediately preceding the absence if the following conditions are  
2 met:

3 (1) The absence is approved by the president of the state  
4 institution of higher education by which the professional is  
5 employed;

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

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

11 (b) An individual who remains in governmental employment with  
12 leave granted in accordance with this section forfeits all rights  
13 to academic tenure, rank and position formerly held at the  
14 employing institution at the end of the eighth year of government  
15 employment.

16 **§18B-8-5. Notice to probationary faculty members of retention or**  
17 **nonretention; hearing.**

18 (a) For the purposes of this section, "Probationary faculty  
19 member" means the definition adopted in a joint rule promulgated by  
20 the commission and council. The rights provided to probationary  
21 faculty members by this section are in addition to, and not in lieu  
22 of, other rights afforded to them by other rules and other  
23 provisions of law.

24 (b) The president of each state institution of higher

1 education shall give written notice concerning retention or  
2 nonretention for the ensuing academic year to a probationary  
3 faculty member not later than March 1.

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

14 **§18B-8-6. Faculty employment practices; campus administrators**  
15 **required to teach or perform research.**

16 Each governing board, with the advice and assistance of the  
17 faculty senate, shall promulgate and adopt a rule in accordance  
18 with section six, article one of this chapter addressing the  
19 following issues:

20 (a) Defining an appropriate balance between full-time and  
21 adjunct faculty members and the appropriate role of adjunct  
22 faculty; and

23 (b) Requiring each administrator on each campus who holds  
24 faculty rank to teach at least one course during each eighteen-

1 month employment period or to perform on-going research in lieu of  
2 teaching.

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

5 **§18B-9-1. Legislative purpose and intent.**

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

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

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

24 **§18B-9-2. Definitions.**

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

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

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

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

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

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

23           (f) "Salary" means the amount of compensation paid through the  
24 State Treasury per annum, excluding those payments made pursuant to

1 section two, article five, chapter five of this code, to an  
2 organization employee;

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

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

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

21 (a) There is hereby continued a temporary state annual salary  
22 schedule for classified employees consisting of a minimum annual  
23 salary for each pay grade in accordance with years of experience.  
24 Nothing in this article guarantees payment to a classified employee

1 of the salary indicated on the schedule at the actual years of  
2 experience. The minimum salary herein indicated shall be prorated  
3 for classified employees working fewer than thirty-seven and one-  
4 half hours per week. For the purposes of this article and article  
5 nine-a, despite any differences in salaries that may occur, a  
6 classified employee is equitably compensated in relation to other  
7 classified employees in the same pay grade if the following  
8 conditions exist:

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

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

15       (b) Nothing in this section requires an appropriation by the  
16 Legislature in excess of the legislative funding priorities as set  
17 forth in this chapter.

18       (c) For purposes of this article, an organization has achieved  
19 full funding of the temporary salary schedule established by this  
20 section when it provides, in total, one hundred percent of the  
21 funds needed to meet the salary funding target as calculated in  
22 October, 2010, in a report, required by a prior enactment of this  
23 section, and presented to the Legislative Oversight Commission on  
24 Education Accountability. Until an organization has achieved full

1 funding as described and has received certification to this effect  
2 from the commission or council, as appropriate, the following  
3 requirements apply:

4 (1) Classified salary increases distributed within the  
5 organization shall be provided in accordance with the uniform  
6 classification and compensation system established by this article  
7 and rules of the commission and council and shall be applied toward  
8 achieving full funding of the temporary salary schedule; and

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

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

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

21 (i) For governing boards under the jurisdiction of the  
22 commission, appropriate progress means an organization has funded  
23 at least twenty-five percent of the amount needed to reach full  
24 funding of the salary schedule by July 1, 2012 as calculated

1 pursuant to this subsection; has funded at least fifty percent of  
 2 the calculated amount by July 1, 2013; has funded at least seventy-  
 3 five percent of the calculated amount by July 1, 2014 and has  
 4 funded one hundred percent of the calculated amount by July 1,  
 5 2015; and

6 (ii) For governing boards under the jurisdiction of the  
 7 council, appropriate progress means an organization has funded at  
 8 least twenty-five percent of the amount needed to reach full  
 9 funding of the salary schedule by July 1, 2013 as calculated  
 10 pursuant to this subsection; has funded at least fifty percent of  
 11 the calculated amount by July 1, 2014; has funded at least seventy-  
 12 five percent of the calculated amount by July 1, 2015 and has  
 13 funded one hundred percent of the calculated amount by July 1,  
 14 2016.

15 **TEMPORARY HIGHER EDUCATION CLASSIFIED EMPLOYEE**

16 **ANNUAL SALARY SCHEDULE**

17 **YEARS OF EXPERIENCE**

18	PAY	0	1	2	3	4	5	6	7	8
19	<b>GRADE</b>									
20	1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900	15,221
21	2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687	16,036
22	3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546	16,925
23	4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478	17,872
24	5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469	18,906
25	6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547	20,013
26	7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697	21,192
27	8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950	22,489
28	9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290	23,887
29	10	19,916	20,421	20,938	21,484	22,029	22,602	23,176	23,763	24,379
30	11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288	25,945
31	12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924	27,638
32	13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701	29,470

1	14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631	31,470
2	15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715	33,624
3	16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981	35,974
4	17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456	38,519
5	18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142	41,303
6	19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064	47,410
7	20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460	50,941
8	21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170	54,786
9	22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224	58,975
10	23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653	63,568
11	24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485	68,579
12	25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781	74,070

13

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

40 **§18B-9-4. Classified employee salary; payment beyond salary**  
 41 **schedule; conditions.**

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

45 (b) Nothing in this article prohibits promotion of a  
 46 classified employee to a job title carrying a higher pay grade if

1 the promotion is in accordance with the provisions of this article,  
2 the personnel classification and compensation system and personnel  
3 rules of the commission and council.

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

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

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

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

17 **§18B-9A-1. Legislative intent and purpose.**

18 (a) The intent of the Legislature in enacting this article is  
19 to establish the classification and compensation system for certain  
20 employees of higher education organizations and apply recognized  
21 best human resources practices in order to use available resources  
22 in the most effective and efficient manner for the benefit of the  
23 citizens of West Virginia.

24 It is further the intent of the Legislature to establish a

1 plan that is fair, accountable, credible, transparent and  
2 systematic. In recognition of the importance of these qualities,  
3 this article, together with articles seven, eight and nine of this  
4 chapter, is designated and may be cited as "FACTs for Higher  
5 Education".

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

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

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

16 (3) Attract well-qualified and diverse job applicants and  
17 retain and motivate employees to accomplish the goals, objectives  
18 and priorities identified in state law, rules of the commission and  
19 council, the statewide master plans for higher education and the  
20 institutions' compacts;

21 (4) Retain and reward employees who make valuable  
22 contributions to state and organization goals, objectives and  
23 priorities;

24 (5) Compensate employees within an organization fairly in

1 relation to one another;

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

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

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

10       (9) Ensure that regular market salary analyses are performed  
11 to determine how organization compensation for all classes of  
12 employees compares to compensation in relevant external markets.

13 **§18B-9A-2. Definitions.**

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

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

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

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

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

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

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

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

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

18 (i) "Nonclassified employee" means an employee of an  
19 organization who holds a position that is not assigned a particular  
20 job and job title within the classification system established by  
21 this article, article nine, and by duly promulgated and adopted  
22 rules of the commission and council and who meets one or more of  
23 the following criteria:

24 (1) Holds a direct policy-making position at the department or

1 organization level; or

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

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

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

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

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

16 (n) "Position information questionnaire" or "PIQ" means a tool  
17 used in the creation and evaluation of position descriptions and  
18 includes the factors of knowledge, experience, complexity and  
19 problem solving, freedom of action, scope and effect, breadth of  
20 responsibility, intra-systems contacts, external contacts, direct  
21 supervision of personnel, indirect supervision of personnel and  
22 health, safety and physical considerations.

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

1 **§18B-9A-3. Applicability.**

2 (a) The provisions of this article apply to employees who meet  
3 the following criteria:

4 (1) A classified employee whose employment, if continued,  
5 accumulates to a minimum total of one thousand forty hours during  
6 a calendar year and extends over at least nine months of a calendar  
7 year; and

8 (2) A classified employee who is involuntarily transferred to  
9 a nonclassified position for which he or she did not apply. A  
10 classified employee involuntarily transferred to a nonclassified  
11 position may exercise the rights set out in this section only for  
12 positions equivalent to or lower than the last job title the  
13 employee held.

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

22 **§18B-9A-4. Job classification system; job classification committee**  
23 **established; membership; meetings; powers and duties.**

24 (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 (1) The rule shall contain the following provisions related to  
7 the 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.

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

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

4 (2) Reviewing and revising job titles to make them consistent  
5 among organizations, including adopting consistent title  
6 abbreviations;

7 (3) Establishing job worth hierarchies and data lines for each  
8 job title;

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

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

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

18 (7) Recommending a procedure for performing job family  
19 reviews;

20 (8) Determining appropriate career ladders within the  
21 classification system and establishing criteria for career  
22 progression; and

23 (9) Hearing job classification appeals prior to commencement  
24 of the formal grievance process pursuant to commission and council

1 rule.

2 (d) The committee shall meet monthly if there is business to  
3 conduct and also may meet more frequently at the call of the chair.  
4 A majority of the voting members serving on the committee at a  
5 given time constitutes a quorum for the purpose of conducting  
6 business.

7 (e) When evaluating jobs, the committee shall use the  
8 following procedure:

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

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

13 (3) After discussing the issues and resolving differences, the  
14 committee shall make a determination of the appropriate  
15 classification for each job.

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

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

23 (h) The commission and council shall develop a position  
24 information questionnaire to be used by all organizations to gather

1 data necessary for classification of positions within the job worth  
2 hierarchy.

3 **§18B-9A-5. Compensation planning and review committee established;**  
4 **membership; meetings; powers and duties.**

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

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

12 The rule shall contain the following requirements related to  
13 the compensation planning and review committee:

14 (1) A systematic method for appointing committee members who  
15 are representative of all the higher education organizations and  
16 affected constituent groups including specifically providing for  
17 membership selections to be made from nominations from these higher  
18 education organizations and affected constituent groups; and

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

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

1 majority of the membership; and

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

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

11       (d) An institution may not have a majority of the committee  
12 members and the combined membership representing various groups or  
13 divisions within or affiliated with an organization in total may  
14 not constitute a majority of the membership.

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

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

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

21       (3) Overseeing the annual internal market review;

22       (4) Meeting at least annually with the Job Classification  
23 Committee to discuss benchmark jobs to be included in salary  
24 surveys, market "hot jobs" that may require a temporary salary

1 adjustment, results of job family reviews, and assessment of  
2 current job titles within the classification system for market  
3 matches and other issues as the Vice Chancellor for Human  
4 Resources, in consultation with the chancellors, determines to be  
5 appropriate; and

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

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

13 **§18B-9A-6. Salary structure and salary schedules.**

14 (a) The commission and council shall develop and maintain a  
15 market salary structure and minimum salary schedules and ensure  
16 that all organizations under their respective jurisdictions adhere  
17 to state and federal laws and duly promulgated and adopted  
18 organization rules.

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

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

23 (2) Approval of the job evaluation plan;

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

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

2 (c) The market salary structure serves as the basis for the  
3 following activities:

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

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

8 (d) The market salary structure shall meet the following  
9 criteria:

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

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

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

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

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

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

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

6           (f) The commission and council jointly may perform an annual  
7 review of market salary data to determine how salaries have changed  
8 in the external market. Based on data collected, the commission  
9 and council jointly in consultation with the Compensation Planning  
10 and Review Committee, shall adjust the market salary structure, if  
11 changes are supported by the data. In the absence of a market  
12 salary study conducted by an external vendor, the commission and  
13 council may not adjust the midpoint differentials between pay  
14 grades unless required to do so by a change in minimum wage or  
15 other laws and may not adjust the range spread for any pay grade.

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

19           (1) The minimum salary floor for each pay grade and step on  
20 the minimum salary schedule is determined by applying the  
21 percentage fixed by commission and council rule promulgated  
22 pursuant to section seven of this article to the annual market  
23 salary data. The commission and council also shall consider the  
24 minimum wage and other laws that ensure that employees earn a

1 living wage and shall maintain a salary structure which ensures  
2 that the average salary of each class of employees meets relative  
3 market equity among employee classes. The commission and council  
4 may take into consideration other factors they consider  
5 appropriate.

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

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

11 **§18B-9A-7. Classification and compensation rules required;**  
12 **emergency rule authorized.**

13 (a) Notwithstanding any provision of law or rule to the  
14 contrary, the commission and council jointly shall design, develop,  
15 implement and administer the personnel system of classification and  
16 compensation pursuant to this article and articles seven, eight and  
17 nine of this chapter. In developing and designing the system, they  
18 shall give careful consideration to the recommendations and  
19 supporting documentation contained in the *Final Report to the*  
20 *Select Committee on Higher Education Personnel*, prepared pursuant  
21 to section thirteen, article one-b of this chapter, which was  
22 received and approved by the Select Committee on January 11, 2010.

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

24 By November 1, 2011, the commission and council shall propose

1 a joint rule or rules for legislative approval in accordance with  
2 article three-a, chapter twenty-nine-a of this code to implement  
3 the provisions of this article and articles seven, eight and nine  
4 of this chapter. The rule shall establish a classification and  
5 compensation system that incorporates best human resources  
6 practices and takes into consideration the recommendations of the  
7 Legislative Select Committee on Higher Education Personnel. At a  
8 minimum, the system rule shall address the areas of organization  
9 accountability, employee classification and compensation,  
10 performance evaluation and development of organization rules.

11 (1) *Organization accountability.* --

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

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

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

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

24 (ii) When a major deficiency is identified, the commission or

1 council, as appropriate, shall notify the governing board of the  
2 institution in writing, giving particulars of the deficiency and  
3 outlining steps the governing board is required to take to correct  
4 the deficiency.

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

8 (iv) If the governing boards fail to correct the major  
9 deficiency or fails to notify the commission or council, as  
10 appropriate, that the deficiency has been corrected within a period  
11 of four months from the time the governing board receives  
12 notification, the commission or council shall apply sanctions as  
13 specified:

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

17 (II) Other sanctions may include, but are not limited to,  
18 suspending new hiring by the organization and prohibiting  
19 compensation increases for key administrators who have authority  
20 over the areas of major deficiency until the identified  
21 deficiencies are corrected.

22 (C) Certifying that an organization has achieved full funding  
23 of the temporary annual classified employee salary schedule or is  
24 making appropriate progress toward achieving full funding pursuant

1 to section three, article nine of this chapter.

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

5       (A) Moving classified employees through the classification  
6 system based on performance and other objective, measurable factors  
7 including education, years of experience in higher education and  
8 experience above position requirements;

9       (B) Achieving and maintaining appropriate levels of employee  
10 dispersion across steps;

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

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

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

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

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

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

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

23 (J) Establishing and maintaining the job classification  
24 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

1 jurisdiction and shall provide technical assistance in rulemaking  
2 as requested.

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

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

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

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

23       (A) Receives certification from the commission or council, as  
24 appropriate, that the organization has achieved full funding of the

1 temporary salary schedule or is making appropriate progress toward  
2 achieving full funding pursuant to section three, article nine of  
3 this chapter;

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

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

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

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

21 **§18B-9A-8. Implementation of classification and compensation**  
22 **system.**

23 (a) Sweeping cultural changes are needed to implement the  
24 recommendations of the Select Committee on Higher Education

1 Personnel and the provisions of this article and articles seven,  
2 eight and nine of this code. These kinds of changes require  
3 dedication and cooperation from all employee classes across the two  
4 systems of public higher education, the commission, council and  
5 state policymakers. The primary responsibility for implementation,  
6 however, rests with the commission and the council who shall  
7 provide leadership and assistance to the human resources  
8 professionals within each organization to bring about the changes  
9 successfully.

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

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

23 (2) Seeking out credentialed, experienced human resources  
24 professionals to provide staff support to the commission, council

1 and organizations, pursuant to section two-a, article four of this  
2 chapter, who are committed to creating a culture of constant  
3 improvement in a complex and rapidly changing environment. These  
4 professionals are catalysts to promote the Fair, Accountable,  
5 Credible, Transparent, and Systematic (FACTs) principles and to  
6 serve the organizations by assisting them in developing and  
7 maintaining best human resources practices.

8       (3) Conducting a review of the human resources function at  
9 each organization pursuant to section nine, article seven of this  
10 chapter to identify best practices and areas of deficiency.

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

16       (5) Preparing a request for a proposal (RFP) for a human  
17 resources information system capable of meeting a wide range of  
18 data requirements to support personnel and policy initiatives.

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

24       (7) Providing data throughout the implementation process to

1 the Legislative Oversight Commission on Education Accountability to  
 2 inform state policymakers of progress and to provide a forum for  
 3 further discussion of higher education personnel issues and  
 4 employee concerns.

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

7 **§18B-10-1. Enrollment, tuition and other fees at education**  
 8 **institutions; refund of fees.**

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

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

16 (2) Auxiliary and auxiliary capital fees; and

17 (3) Required educational and general capital fees.

18 (b) ~~An institution~~ A governing board may establish a single  
 19 special revenue account for each of the following classifications  
 20 of fees:

21 (1) All tuition and required educational and general fees  
 22 collected;

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

24 (3) All required educational and general capital fees

1 collected to support existing systemwide and institutional debt  
2 service and future systemwide and institutional debt service,  
3 capital projects and campus renewal for educational and general  
4 facilities.

5 (4) Subject to any covenants or restrictions imposed with  
6 respect to revenue bonds payable from the accounts, ~~an institution~~  
7 a governing board may expend funds from each special revenue  
8 account for any purpose for which funds were collected within that  
9 account regardless of the original purpose for which the funds were  
10 collected.

11 (c) The purposes for which tuition and fees may be expended  
12 include, but are not limited to, health services, student  
13 activities, recreational, athletic and extracurricular activities.  
14 Additionally, tuition and fees may be used to finance a ~~student's~~  
15 students' attorney to perform legal services for students in civil  
16 matters at the institutions. ~~Provided, That~~ The legal services are  
17 limited ~~only~~ to those types of cases, programs or services approved  
18 by the ~~administrative head~~ president of the institution where the  
19 legal services are to be performed.

20 (d) By October 1, 2011, the commission and council ~~jointly~~  
21 each shall propose a rule for legislative approval in accordance  
22 with ~~the provisions of~~ article three-a, chapter twenty-nine-a of  
23 this code to govern the fixing, collection and expenditure of  
24 tuition and other fees by the governing boards under their

1 respective jurisdictions.

2 (e) The schedule of all tuition and fees, and any changes in  
3 the schedule, shall be entered in the minutes of the meeting of the  
4 appropriate governing board and the board shall file with the  
5 commission or council, or both, as appropriate, and the Legislative  
6 Auditor a certified copy of the schedule and changes.

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

10 (1) Undergraduate students taking fewer than twelve credit  
11 hours in a regular term shall have their fees reduced pro rata  
12 based upon one twelfth of the full-time rate per credit hour and  
13 graduate students taking fewer than nine credit hours in a regular  
14 term shall have their fees reduced pro rata based upon one ninth of  
15 the full-time rate per credit hour.

16 (2) Fees for students enrolled in summer terms or other  
17 nontraditional time periods shall be prorated based upon the number  
18 of credit hours for which the student enrolls in accordance with  
19 ~~the provisions of~~ this subsection.

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

23 (1) The governing boards shall permit fee payments to be made  
24 in installments over the course of the academic term. All fees

1 shall be paid prior to ~~the~~ awarding of course credit at the end of  
2 the academic term.

3 (2) The governing boards also shall authorize the acceptance  
4 of credit cards or other payment methods which may be generally  
5 available to students for the payment of fees. The governing  
6 boards may charge the students for the reasonable and customary  
7 charges incurred in accepting credit cards and other methods of  
8 payment.

9 (3) If a governing board determines that a student's finances  
10 are affected adversely by a legal work stoppage, it may allow the  
11 student an additional six months to pay the fees for any academic  
12 term. The governing board shall determine on a case-by-case basis  
13 ~~if~~ whether the finances of a student are affected adversely.

14 (4) The commission and council jointly shall propose a rule in  
15 accordance with ~~the provisions of~~ article three-a, chapter twenty-  
16 nine-a of this code defining conditions under which ~~an institution~~  
17 a governing board may offer tuition and fee deferred payment plans  
18 ~~through the institution~~ itself or through third parties.

19 (5) ~~An institution~~ A governing board may charge interest or  
20 fees for any deferred or installment payment plans.

21 (h) In addition to the other fees provided in this section,  
22 each governing board may impose, collect and distribute a fee to be  
23 used to finance a nonprofit, student-controlled public interest  
24 research group if the students at the institution demonstrate

1 support for the increased fee in a manner and method established by  
2 that institution's elected student government. The fee may not be  
3 used to finance litigation against the institution.

4 (i) ~~Institutions~~ Governing boards shall retain tuition and fee  
5 revenues not pledged for bonded indebtedness or other purposes in  
6 accordance with the tuition ~~rule~~ rules proposed by the commission  
7 and council ~~jointly~~ pursuant to this section. The tuition ~~rule~~  
8 rules shall address the following areas:

9 (1) ~~Provide~~ Providing a basis for establishing nonresident  
10 tuition and fees;

11 (2) ~~Allow institutions~~ Allowing governing boards to charge  
12 different tuition and fees for different programs;

13 (3) ~~Provide that a board of Governors may~~ Authorizing a  
14 governing board to propose to the commission, council or both, as  
15 appropriate, a mandatory auxiliary fee under the following  
16 conditions:

17 (A) The fee shall be approved by the commission, council or  
18 both, as appropriate, and either the students below the senior  
19 level at the institution or the Legislature before becoming  
20 effective;

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

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

1 (D) If the fee is approved, the amount of the state subsidy  
2 shall be reduced annually by the amount of money generated for the  
3 institution by the fees. All state subsidies for the auxiliary  
4 services shall cease five years from the date the mandatory  
5 auxiliary fee is implemented;

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

9 (4) ~~Establish~~ Establishing methodology, where applicable, to  
10 ensure that, within the appropriate time period under the compact,  
11 community and technical college tuition rates for ~~community and~~  
12 ~~technical college~~ students in all ~~independently~~ accredited  
13 community and technical colleges will be commensurate with the  
14 tuition and fees charged by their peer institutions.

15 (j) A penalty may not be imposed by the commission or council  
16 upon any ~~institution~~ governing board based upon the number of  
17 nonresidents who attend the institution unless the commission or  
18 council determines that admission of nonresidents to any  
19 institution or program of study within the institution is impeding  
20 unreasonably the ability of resident students to attend the  
21 institution or participate in the programs of the institution. The  
22 ~~institutions~~ governing boards shall report annually to the  
23 commission or council on the numbers of nonresidents and ~~such~~ any  
24 other enrollment information ~~as~~ the commission or council may

1 request.

2 (k) Tuition and fee increases of the governing boards, ~~except~~  
3 ~~for including~~ the governing boards of ~~the state institutions of~~  
4 ~~higher education known as~~ Marshall University and West Virginia  
5 University, are subject to rules adopted by the commission and  
6 council ~~jointly~~ pursuant to this section and in accordance with ~~the~~  
7 ~~provisions of~~ article three-a, chapter twenty-nine-a of this code.  
8 The commission or council, as appropriate, shall examine  
9 individually each request from a governing board for an increase  
10 and make its determinations as follows:

11 ~~(1) Subject to the provisions of subdivisions (4) and (8) of~~  
12 ~~this subsection, a governing board of an institution under the~~  
13 ~~jurisdiction of the commission may propose tuition and fee~~  
14 ~~increases of up to nine and one-half percent for undergraduate~~  
15 ~~resident students for any fiscal year. The nine and one half~~  
16 ~~percent total includes the amount of increase over existing tuition~~  
17 ~~and fees, combined with the amount of any newly established~~  
18 ~~specialized fee which may be proposed by a governing board.~~

19 ~~(2) A governing board under the jurisdiction of the council~~  
20 ~~may propose tuition and fee increases of up to four and three-~~  
21 ~~quarters percent for undergraduate resident students for any fiscal~~  
22 ~~year, except a governing board may propose increases in excess of~~  
23 ~~four and three quarters percent if existing tuition and fee rates~~  
24 ~~at the institution are below the state average for tuition and fees~~

1 ~~at institutions under the jurisdiction of the council. The four~~  
2 ~~and three quarters percent total includes the amount of increase~~  
3 ~~over existing tuition and fees, combined with the amount of any~~  
4 ~~newly established, specialized fee which may be proposed by a~~  
5 ~~governing board.~~

6 ~~(3) The commission or council, as appropriate, shall examine~~  
7 ~~individually each request from a governing board for an increase.~~

8 ~~(4) Subject to the provisions of subdivision (8) of this~~  
9 ~~subsection, the governing boards of Marshall University and West~~  
10 ~~Virginia University, as these provisions relate to the state~~  
11 ~~institutions of higher education known as Marshall University and~~  
12 ~~West Virginia University, each may annually:~~

13 ~~(A) Increase tuition and fees for undergraduate resident~~  
14 ~~students to the maximum allowed by this section without seeking~~  
15 ~~approval from the commission; and~~

16 ~~(B) Set tuition and fee rates for post-baccalaureate resident~~  
17 ~~students and for all nonresident students, including establishing~~  
18 ~~regional tuition and fee rates, reciprocity agreements or both.~~

19 ~~(C) The provisions of this subdivision do not apply to tuition~~  
20 ~~and fee rates of the administratively linked institution known as~~  
21 ~~Marshall Community and Technical College, the administratively~~  
22 ~~linked institution known as the Community and Technical College at~~  
23 ~~West Virginia University Institute of Technology, the regional~~  
24 ~~campus known as West Virginia University at Parkersburg and, until~~

1 ~~the first day of July, two thousand seven, the regional campus~~  
2 ~~known as West Virginia University Institute of Technology.~~

3 ~~(5)(1) Any proposed~~ A ~~tuition and fee increase greater than~~  
4 three percent for resident students proposed by a governing board  
5 ~~for state institutions of higher education other than the state~~  
6 ~~institutions of higher education known as~~ except the governing  
7 boards of Marshall University, West Virginia School of Osteopathic  
8 Medicine and West Virginia University, requires the approval of the  
9 commission or council, as appropriate.

10 (2) A tuition and fee increase greater than five percent for  
11 resident students proposed by the governing boards of Marshall  
12 University, West Virginia School of Osteopathic Medicine and West  
13 Virginia University requires the approval of the commission.

14 (3) In determining whether to approve or deny ~~the~~ a governing  
15 board's request for a tuition and/or fee increase for resident  
16 students greater than the increases granted pursuant to  
17 subdivisions (1) and (2) of this subsection, the commission or  
18 council shall determine the progress the ~~institution~~ governing  
19 board has made toward meeting the conditions outlined in this  
20 ~~subdivision~~ subsection and shall make this determination the  
21 predominate factor in its decision. The commission or council  
22 shall consider the degree to which each ~~institution~~ governing board  
23 has met the following conditions:

24 (A) ~~Has Maximized~~ Maximizes resources available through

1 nonresident tuition and fee charges to the satisfaction of the  
2 commission or council;

3 (B) ~~Is~~ Consistently ~~achieving~~ achieves the benchmarks  
4 established in the compact ~~of the institution~~ pursuant to ~~the~~  
5 ~~provisions of article one-a~~ one-d of this chapter;

6 (C) ~~Is~~ Continuously ~~pursuing~~ pursues the statewide goals for  
7 post-secondary education and the statewide compact established in  
8 ~~articles one and one-a~~ of this chapter;

9 (D) ~~Has demonstrated~~ Demonstrates to the satisfaction of the  
10 commission or council that an increase will be used to maintain  
11 high-quality programs at the institution;

12 (E) ~~Has demonstrated~~ Demonstrates to the satisfaction of the  
13 commission or council that the ~~institution~~ governing board is  
14 making adequate progress toward achieving the goals for education  
15 established by the southern regional education board;

16 (F) Demonstrates to the satisfaction of the commission or  
17 council that the governing board has considered the average per  
18 capita income of West Virginia families and their ability to pay  
19 for any increases; and

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

23 ~~(F) To the extent authorized, will increase by up to five~~  
24 ~~percent the available tuition and fee waivers provided by the~~

1 ~~institution. The increased waivers may not be used for athletics.~~

2       ~~(6) (4) This section does not require equal increases among~~  
3 ~~institutions governing boards or nor does it~~ require any level of  
4 increase ~~at an institution~~ by a governing board.

5       ~~(7) (5) The commission and council shall report to the~~  
6 Legislative Oversight Commission on Education Accountability  
7 regarding the basis for approving or denying each ~~approval or~~  
8 ~~denial~~ request as determined using the criteria established in  
9 ~~subdivision (5) of this subsection.~~

10       ~~(8) Notwithstanding the provisions of subdivisions (1) and (4)~~  
11 ~~of this subsection, tuition and fee increases at state institutions~~  
12 ~~of higher education which are under the jurisdiction of the~~  
13 ~~commission, including the state institutions of higher education~~  
14 ~~known as Marshall University and West Virginia University, are~~  
15 ~~subject to the following conditions:~~

16       ~~(A) Institutions may increase tuition and fees for resident,~~  
17 ~~undergraduate students by no more than an average of seven and one~~  
18 ~~half percent per year during any period covering four consecutive~~  
19 ~~fiscal years, with the first fiscal year of the first four fiscal~~  
20 ~~year cycle beginning on July 1, 2007;~~

21       ~~(B) The seven and one half percent average cap does not apply~~  
22 ~~to an institution for any fiscal year in which the total state base~~  
23 ~~operating budget appropriations to that institution are less than~~  
24 ~~the total state base operating budget appropriations in the fiscal~~

1 ~~year immediately preceding;~~

2 ~~(C) A new capital fee or an increase in an existing capital~~  
3 ~~fee is excluded from the tuition and fee increase calculation in~~  
4 ~~this subdivision:~~

5 ~~(i) If the new fee or fee increase is approved by an~~  
6 ~~institutional a governing board or by a referendum of an~~  
7 ~~institution's undergraduate students, or both, on or before~~  
8 ~~February 1, 2006; or~~

9 ~~(ii) If the following conditions are met:~~

10 ~~(I) The new fee or fee increase was approved by an~~  
11 ~~institutional a governing board or by a referendum of an~~  
12 ~~institution's undergraduate students, or both, on or before July 1,~~  
13 ~~2006;~~

14 ~~(II) The institution for which the capital fee is approved has~~  
15 ~~been designated a university pursuant to the provisions of section~~  
16 ~~six, article two-a of this chapter by the effective date of this~~  
17 ~~section; and~~

18 ~~(III) The institutional board of Governors previously oversaw~~  
19 ~~a community and technical college that achieved independent~~  
20 ~~accreditation and consequently acquired its own board of Governors;~~

21 ~~(D) Institutions shall provide, in a timely manner, any data~~  
22 ~~on tuition and fee increases requested by the staff of the~~  
23 ~~commission. The commission shall: (i) collect the data from any~~  
24 ~~institution under its jurisdiction; and (ii) Annually by July 1,~~

1 ~~provide a detailed analysis of the institutions' compliance with~~  
2 ~~the provisions of this subdivision to the Legislative Oversight~~  
3 ~~Commission on Education Accountability.~~

4 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

5 **§18B-19-10. Authorization to sell property; use of proceeds.**

6 (a) Notwithstanding any other provision of law or this code to  
7 the contrary, the commission, council and governing boards each may  
8 ~~sell, lease, convey or otherwise dispose of all or part of any real~~  
9 property that it owns, either by contract or at public auction, and  
10 retain the proceeds of the transaction.

11 (1) The commission, council and governing boards may not ~~sell,~~  
12 ~~lease, convey or otherwise dispose of~~ any real property without  
13 first performing the following steps:

14 (A) Providing for property appraisal by two independent  
15 licensed appraisers. The property may not be sold for less than  
16 the average of the two appraisals;

17 (B) Providing notice to the public in the county in which the  
18 real property is located by a Class II legal advertisement pursuant  
19 to section two, article three, chapter fifty-nine of this code;

20 (C) Holding a public hearing on the issue in the county in  
21 which the real property is located; and

22 (D) In the case of the commission, notifying the Joint  
23 Committee on Government and Finance.

24 ~~(2) Any proceeds from the sale, lease, conveyance or other~~

1 ~~disposal of real property that is used jointly by institutions or~~  
2 ~~for statewide programs under the jurisdiction of the commission or~~  
3 ~~the council shall be transferred to the General Revenue Fund of the~~  
4 ~~state.~~

5       ~~(b) (2)~~ The commission, council or a governing board shall  
6 deposit the net proceeds from the sale ~~lease, conveyance or other~~  
7 ~~disposal~~ of real property into a special revenue account in the  
8 State Treasury to be appropriated by the Legislature in the annual  
9 budget bill for the purchase of additional real property, equipment  
10 or technology, or for capital improvements or maintenance at the  
11 institution that sold the surplus real property.

12       (b) Notwithstanding any other provision of law or this code to  
13 the contrary, for purposes that further the state goals, objectives  
14 and priorities for higher education set out in this code, the  
15 commission, council and each governing board may lease, as lessor,  
16 any real property that it owns, either by contract or at public  
17 auction, and retain the proceeds of the lease.

18       (c) Notwithstanding any other provision of law or this code to  
19 the contrary, the commission, council and each governing board may  
20 convey, transfer or exchange any real property it owns to any other  
21 public body.

NOTE: The purpose of this bill is to create "FACTS for Higher Education" by establishing fair, accountable, credible, transparent, and systematic mechanisms to determine classification status and compensation for classified employees in public higher

education organizations. It repeals certain provisions relating to higher education personnel generally, moves several current provisions to new locations, and rewrites three existing articles. The bill sets forth certain specific powers, duties, and limitations of the Higher Education Policy Commission, the Council for Community and Technical College Education, and each state institution of higher education relating to personnel. It makes legislative findings, defines terms, provides for promulgation of rules, requires regular reviews of human resources functions, and describes and establishes dates for periodic reports to the Legislature. The bill sets percentage limits for certain types of employees; establishes implementation and effective dates, requires review and approval of certain budget and rule-making functions; provides terms and conditions for certain employment practices; requires salary comparisons among classes of employees and certain of their peers; and authorizes and requires certain employee benefits and rights. The bill removes codified salary caps for classified employees under specific circumstances, provides for establishing market salary structures and a minimum salary schedule, requires periodic market salary studies, and specifies uses for study findings. The bill requires employee performance evaluations and training for supervisory personnel who administer evaluations, sets limits for exercising certain operational flexibilities, establishes implementation goals for certain statutes and rules, and assigns certain implementation responsibilities. The bill also establishes graduation rates that certain governing boards must meet, repeals sunset provision for pilot investment program for Marshall University and West Virginia University; extending their authority to increase certain types of investment with approval of the Policy Commission; and clarifies authority of the Policy Commission, the Council, and governing boards regarding leasing, renting, and selling property.

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

§18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12; §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6; and §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 have been completely rewritten; §18B-4-2a; §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; and §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8 are new; therefore, strike-throughs and underscoring have been omitted.