

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 444**

5 (SENATORS PLYMALE, JENKINS AND BEACH, *original sponsors*)

6 \_\_\_\_\_  
7 [Passed April 13, 2013; in effect from passage.]  
8 \_\_\_\_\_  
9

10 AN ACT to amend and reenact §12-1-12d of the Code of West Virginia,  
11 1931, as amended; to amend and reenact §18B-2A-1 and §18B-2A-3  
12 of said code; and to amend and reenact §18B-7-11 of said code,  
13 all relating to higher education generally; increasing the  
14 amounts that Marshall University and West Virginia University  
15 may have invested with their respective foundations under  
16 certain conditions; authorizing certain members of  
17 institutional governing boards are eligible to succeed  
18 themselves under certain conditions; collecting, synthesizing  
19 and disseminating data from state institutions of higher  
20 education; directing institutional boards of governors to  
21 cooperate in certain data-related operations; providing  
22 certain privacy protections for data; exempting the West  
23 Virginia Policy Commission and West Virginia Council for  
24 Community and Technical College Education from meeting certain  
25 employee ratios; and modifying the method of calculating  
26 certain employee ratios.

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

2       That §12-1-12d of the Code of West Virginia, 1931, as amended,  
3 be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code  
4 be amended and reenacted; and that §18B-7-11 of said code be  
5 amended and reenacted, all to read as follows:

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

7 **ARTICLE 1. STATE DEPOSITORIES.**

8 **§12-1-12d. Investments by Marshall University and West Virginia**  
9               **University.**

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

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

22       (c) Moneys of a university that may be invested with its  
23 foundation pursuant to this section are those subject to the  
24 administrative control of the university that are collected under  
25 an act of the Legislature for specific purposes and do not include

1 any funds made available to the university from the State General  
2 Revenue Fund or the funds established in sections eighteen or  
3 eighteen-a, article twenty-two, chapter twenty-nine of this code.  
4 Moneys permitted to be invested under this section may be  
5 aggregated in an investment fund for investment purposes.

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

10 (1) \$18 million for Marshall University and \$25 million for  
11 West Virginia University; or

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

15 (3) Notwithstanding subdivisions (1) and (2) of this  
16 subsection, with the approval of the Higher Education Policy  
17 Commission, Marshall University may increase the amount invested to  
18 \$60 million and West Virginia University may increase the amount  
19 invested to \$70 million.

20 (e) Investments by foundations that are authorized under this  
21 section shall be made in accordance with and subject to the  
22 provisions of the Uniform Prudent Investor Act codified as article  
23 six-c, chapter forty-four of this code. As part of its fiduciary  
24 responsibilities, each governing board shall establish investment  
25 policies in accordance with the Uniform Prudent Investor Act for  
26 those moneys invested with its foundation. The governing board

1 shall review, establish and modify, if necessary, the investment  
2 objectives as incorporated in its investment policies so as to  
3 provide for the financial security of the moneys invested with its  
4 foundation. The governing boards shall give consideration to the  
5 following:

6 (1) Preservation of capital;

7 (2) Diversification;

8 (3) Risk tolerance;

9 (4) Rate of return;

10 (5) Stability;

11 (6) Turnover;

12 (7) Liquidity; and

13 (8) Reasonable cost of fees.

14 (f) A governing board shall report annually by December 31 to  
15 the Governor and to the Joint Committee on Government and Finance  
16 on the performance of investments managed by its foundation  
17 pursuant to this section.

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

22 **CHAPTER 18B. HIGHER EDUCATION.**

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

24 **§18B-2A-1. Findings; composition of boards; terms and**  
25 **qualifications of members; vacancies; eligibility for**

1           **reappointment.**

2           (a) *Findings.* -

3           The Legislature finds that the State of West Virginia is  
4 served best when the membership of each governing board includes  
5 the following:

6           (1) The academic expertise and institutional experience of  
7 faculty members and a student of the institution governed by the  
8 board;

9           (2) The technical or professional expertise and institutional  
10 experience of a classified employee of the institution governed by  
11 the board;

12           (3) An awareness and understanding of the issues facing the  
13 institution governed by the board; and

14           (4) The diverse perspectives that arise from a membership that  
15 is balanced in terms of gender and varied in terms of race and  
16 ethnic heritage.

17           (b) *Boards of governors established.* -

18           A board of governors is continued at each of the following  
19 institutions: Bluefield State College, Blue Ridge Community and  
20 Technical College, Bridgemont Community and Technical College,  
21 Concord University, Eastern West Virginia Community and Technical  
22 College, Fairmont State University, Glenville State College,  
23 Kanawha Valley Community and Technical College, Mountwest Community  
24 and Technical College, Marshall University, New River Community and  
25 Technical College, Pierpont Community and Technical College,  
26 Shepherd University, Southern West Virginia Community and Technical

1 College, West Liberty University, West Virginia Northern Community  
2 and Technical College, the West Virginia School of Osteopathic  
3 Medicine, West Virginia State University, West Virginia University  
4 and West Virginia University at Parkersburg.

5 (c) *Board membership.* -

6 (1) An appointment to fill a vacancy on the board or  
7 reappointment of a member who is eligible to serve an additional  
8 term is made in accordance with the provisions of this section.

9 (2) The Board of Governors for Marshall University consists of  
10 sixteen persons. The Board of Governors for West Virginia  
11 University consists of seventeen persons. The boards of governors  
12 of the other state institutions of higher education consist of  
13 twelve persons.

14 (3) Each board of governors includes the following members:

15 (A) A full-time member of the faculty with the rank of  
16 instructor or above duly elected by the faculty of the respective  
17 institution;

18 (B) A member of the student body in good academic standing,  
19 enrolled for college credit work and duly elected by the student  
20 body of the respective institution; and

21 (C) A member from the institutional classified employees duly  
22 elected by the classified employees of the respective institution;

23 (4) For the Board of Governors at Marshall University,  
24 thirteen lay members appointed by the Governor, by and with the  
25 advice and consent of the Senate, pursuant to this section;

26 (5) For the Board of Governors at West Virginia University,

1 twelve lay members appointed by the Governor, by and with the  
2 advice and consent of the Senate, pursuant to this section, and  
3 additionally:

4 (A) The Chairperson of the Board of Visitors of West Virginia  
5 University Institute of Technology;

6 (B) A full-time faculty member representing the extension  
7 service at the institution or a full-time faculty member  
8 representing the health sciences, selected by the faculty senate.

9 (6) For each board of governors of the other state  
10 institutions of higher education, nine lay members appointed by the  
11 Governor, by and with the advice and consent of the Senate,  
12 pursuant to this section.

13 (A) Of the nine members appointed by the Governor, no more  
14 than five may be of the same political party. Of the thirteen  
15 members appointed by the Governor to the governing board of  
16 Marshall University, no more than eight may be of the same  
17 political party. Of the twelve members appointed by the Governor  
18 to the governing board of West Virginia University, no more than  
19 seven may be of the same political party.

20 (B) Of the nine members appointed by the Governor, at least  
21 five shall be residents of the state. Of the thirteen members  
22 appointed by the Governor to the governing board of Marshall  
23 University, at least eight shall be residents of the state. Of the  
24 twelve members appointed by the Governor to the governing board of  
25 West Virginia University, at least seven shall be residents of the  
26 state.

1 (7) In making lay appointments, the Governor shall consider  
2 the institutional mission and membership characteristics including  
3 the following:

4 (A) The need for individual skills, knowledge and experience  
5 relevant to governing the institution;

6 (B) The need for awareness and understanding of institutional  
7 problems and priorities, including those related to research,  
8 teaching and outreach;

9 (C) The value of gender, racial and ethnic diversity; and

10 (D) The value of achieving balance in gender and diversity in  
11 the racial and ethnic characteristics of the lay membership of each  
12 board.

13 (d) *Board member terms.* -

14 (1) The student member serves for a term of one year. Each  
15 term begins on July 1.

16 (2) The faculty member serves for a term of two years. Each  
17 term begins on July 1. Faculty members are eligible to succeed  
18 themselves for three additional terms, not to exceed a total of  
19 eight consecutive years.

20 (3) The member representing classified employees serves for a  
21 term of two years. Each term begins on July 1. Members  
22 representing classified employees are eligible to succeed  
23 themselves for three additional terms, not to exceed a total of  
24 eight consecutive years.

25 (4) The appointed lay citizen members serve terms of four  
26 years each and are eligible to succeed themselves for no more than



1 one additional term, except that citizen members who are appointed  
2 to fill unexpired terms are eligible to succeed themselves for two  
3 full terms after completing an unexpired term.

4 (5) A vacancy in an unexpired term of a member shall be filled  
5 for the unexpired term within thirty days of the occurrence of the  
6 vacancy in the same manner as the original appointment or election.  
7 Except in the case of a vacancy, all elections are held and all  
8 appointments are made no later than June 30 preceding the  
9 commencement of the term. Each board of governors shall elect one  
10 of its appointed lay members to be chairperson in June of each  
11 year. A member may not serve as chairperson for more than four  
12 consecutive years.

13 (6) The appointed members of the boards of governors serve  
14 staggered terms of up to four years except that four of the initial  
15 appointments to the governing boards of community and technical  
16 colleges that became independent July 1, 2008, are for terms of two  
17 years and five of the initial appointments are for terms of four  
18 years.

19 (e) *Board member eligibility, expenses.* -

20 (1) A person is ineligible for appointment to membership on a  
21 board of governors of a state institution of higher education under  
22 the following conditions:

23 (A) For a baccalaureate institution or university, a person is  
24 ineligible for appointment who is an officer, employee or member of  
25 any other board of governors; an employee of any institution of  
26 higher education; an officer or member of any political party

1 executive committee; the holder of any other public office or  
2 public employment under the government of this state or any of its  
3 political subdivisions; an employee of any affiliated research  
4 corporation created pursuant to article twelve of this chapter; an  
5 employee of any affiliated foundation organized and operated in  
6 support of one or more state institutions of higher education; or  
7 a member of the council or commission. This subsection does not  
8 prevent the representative from the faculty, classified employees,  
9 students or the superintendent of a county board of education from  
10 being members of the governing boards.

11 (B) For a community and technical college, a person is  
12 ineligible for appointment who is an officer, employee or member of  
13 any other board of governors; a member of a board of visitors of  
14 any public institution of higher education; an employee of any  
15 institution of higher education; an officer or member of any  
16 political party executive committee; the holder of any other public  
17 office, other than an elected county office, or public employment,  
18 other than employment by the county board of education, under the  
19 government of this state or any of its political subdivisions; an  
20 employee of any affiliated research corporation created pursuant to  
21 article twelve of this chapter; an employee of any affiliated  
22 foundation organized and operated in support of one or more state  
23 institutions of higher education; or a member of the council or  
24 commission. This subsection does not prevent the representative  
25 from the faculty, classified employees or students from being  
26 members of the governing boards.

1 (2) Before exercising any authority or performing any duties  
2 as a member of a governing board, each member shall qualify as such  
3 by taking and subscribing to the oath of office prescribed by  
4 section five, article IV of the Constitution of West Virginia and  
5 the certificate thereof shall be filed with the Secretary of State.

6 (3) A member of a governing board appointed by the Governor  
7 may not be removed from office by the Governor except for official  
8 misconduct, incompetence, neglect of duty or gross immorality and  
9 then only in the manner prescribed by law for the removal of the  
10 state elective officers by the Governor.

11 (4) The members of the board of governors serve without  
12 compensation, but are reimbursed for all reasonable and necessary  
13 expenses actually incurred in the performance of official duties  
14 under this article upon presentation of an itemized sworn statement  
15 of expenses.

16 (5) The president of the institution shall make available  
17 resources of the institution for conducting the business of its  
18 board of governors. All expenses incurred by the board of  
19 governors and the institution under this section are paid from  
20 funds allocated to the institution for that purpose.

21 **§18B-2A-3. Supervision of governing boards; promulgation of rules;**  
22 **data collection and dissemination.**

23 (a) The governing boards are subject to the supervision of the  
24 commission or the council, as appropriate, except in those  
25 instances where specific statutory exceptions are granted by law to  
26 the governing boards of Marshall University and West Virginia

1 University.

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

7       (c) The Chancellor for Higher Education and the Chancellor for  
8 Community and Technical College Education, under the supervision of  
9 their respective boards, are responsible for the coordination of  
10 policies, purposes and rules of the governing boards and shall  
11 provide for and facilitate sufficient interaction among the  
12 governing boards and between the governing boards and the State  
13 Board of Education to meet the goals and objectives provided in the  
14 compacts and in section one-a, article one and article one-d of  
15 this chapter.

16       (d) The governing boards and the State Board of Education  
17 shall provide all information requested by the commission and the  
18 council, whether the request is made separately or jointly, in an  
19 appropriate format and in a timely manner.

20       (1) Each governing board shall cooperate with the West  
21 Virginia Network for Educational Telecomputing (WVNET) in designing  
22 appropriate interfaces with the databases of institutions under its  
23 jurisdiction and shall grant WVNET direct access to these  
24 databases.

25       (2) WVNET, on behalf of the commission or council or both,  
26 shall generate reports from the data accessed for the purposes set

1 forth in section five, article one-a and sections eight and ten,  
2 article one-d of this chapter.

3 (3) All data accessed or received from an institution shall be  
4 treated in a manner consistent with the privacy protections  
5 outlined in section ten, article one-d of this chapter.

6 **ARTICLE 7. PERSONNEL GENERALLY.**

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

9 (a) Notwithstanding any provision of this code to the  
10 contrary, by July 1, 2015, the percentage of personnel placed in  
11 the category of nonclassified at a higher education organization  
12 may not exceed twenty percent of the total number of classified and  
13 nonclassified employees of that organization as those terms are  
14 defined in section two, article nine-a of this chapter and who are  
15 eligible for membership in a state retirement system of the State  
16 of West Virginia or other retirement plan authorized by the state.

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

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

25 (1) Organizations shall count faculty or classified

1 employees, respectively, who retain the right to return to faculty  
2 or classified employee positions, in the employee category they are  
3 serving in at the time of reporting as required by subsections (a)  
4 and (b), section eight of this article. Such employees will be  
5 counted in their original category at such time as they exercise  
6 their return rights.

7 (2) Athletic coaches are excluded from calculation of the  
8 ratio. The commission and the council shall include consideration  
9 of this employee category in each review required by section nine  
10 of this article and shall monitor organizations' use of this  
11 category and include this information in the reports required by  
12 subsections (a) and (b), section eight of this article.

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

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

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

25 (B) The number of nonclassified personnel may not be increased  
26 above twenty percent unless the increase is approved by both the

1 commission and the council.

2       (2) *Powers and duties of commission and council regarding*  
3 *nonclassified staff ratios.* -

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

8       (B) The commission and council shall provide technical  
9 assistance to organizations under their respective jurisdictions in  
10 collecting and interpreting data to ensure that they fulfill the  
11 requirements established by this section. Consideration of these  
12 issues shall be made part of each review required by section nine  
13 of this article and information from the review included in the  
14 reports required by subsections (a) and (b), section eight of this  
15 article;

16       (C) The chancellors shall monitor the progress of the  
17 organizations in meeting the deadlines established in this section  
18 and shall report periodically to the council and commission. The  
19 commission and council shall make a preliminary compliance report  
20 to the Legislative Oversight Commission on Education Accountability  
21 by September 1, 2013, and a final report on organization compliance  
22 to that body by September 1, 2015.

23       (D) Subject to a joint recommendation by the commission and  
24 the council and subsequent affirmative action by the Legislature to  
25 extend the authority beyond the specified date of termination, the  
26 authority of an organization to place more than twenty percent of

1 its personnel in the nonclassified category pursuant to this  
2 section expires on July 1, 2016.

3 (d) The current annual salary of a nonclassified employee may  
4 not be reduced if his or her position is redefined as a classified  
5 position solely to meet the requirements of this section. If such  
6 a nonclassified employee is reclassified, his or her salary does  
7 not constitute evidence of inequitable compensation in comparison  
8 to other employees in the same paygrade.

9 (e) For the purposes of this section only the commission and  
10 council are not considered higher education organizations.