

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 439**

(By Senators Prezioso, Carmichael,  
Gaunch, D. Hall, Kessler, Leonhardt,  
Walters, Williams, and Plymale)

---

[Originating in the Committee on Education;  
reported February 27, 2015.]

---

A BILL to amend and reenact §18B-4-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code; and to amend said code by adding thereto a new section, designated §18B-9A-5a, all relating to public higher education personnel generally; clarifying roles of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; providing legislative purposes and intent for higher education personnel; defining terms; clarifying duties of Vice Chancellor for Human Resources of the Higher Education Policy Commission; eliminating outdated and redundant reporting and review requirements; providing for evaluation and reviews of organizations for certain human resource deficiencies, best practices and compliance with state higher education personnel laws; providing percentages of employees designated as "nonclassified"

[COM. SUB. FOR S. B. NO. 439]

employees; directing the Higher Education Policy Commission and the Community and Technical College Council to study employment practices; providing legislative purposes and intent for classified employees salary schedule; defining terms; providing legislative purposes and intent for classification and compensation system; defining terms; clarifying that certain provisions are only applicable to classified employees; clarifying powers and duties of the Job Classification Committee; clarifying powers and duties of the Compensation Planning and Review Committee; eliminating requirement that salary schedules fall within relative market equity; restricting duties of Job Classification Committee and Compensation Planning and Review Committee; clarifying role and considerations of the Higher Education Policy Commission and Community and Technical College Council in developing salary schedules for classified employees; and requiring classification and compensation rules.

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

That §18B-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9, §18B-7-11 and §18B-7-16 of said code be amended and reenacted; that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6 and §18B-9A-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-9A-5a, all to read as follows:

**ARTICLE 4. GENERAL ADMINISTRATION.**

**§18B-4-2a. Employment of Vice Chancellor for Human resources; powers and duties**

[COM. SUB. FOR S. B. NO. 439]

**generally; staff; office.**

1 (a) By and with the advice and consent of the Council for Community and Technical College  
2 Education, the commission shall employ a Vice Chancellor for Human Resources who may not be  
3 dismissed without the consent of the council. ~~The person employed as senior director of human~~  
4 ~~resources by the commission on January 1, 2011, becomes the Vice Chancellor for Human~~  
5 ~~Resources on the effective date of this section. Thereafter, any~~ Any vacancy occurring in this  
6 position shall be filled in accordance with this section.

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

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

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

15 (c) The vice chancellor, in consultation with the chancellors, performs functions, tasks and  
16 responsibilities necessary to carry out the policy directives of the council and commission and any  
17 other duties prescribed by law. The vice chancellor oversees and monitors all issues related to the  
18 personnel system for higher education employees and provides advice and technical support to  
19 organizations as directed or requested on all issues related to the design, development,  
20 implementation and administration of the personnel system established by this chapter and by duly

[COM. SUB. FOR S. B. NO. 439]

1 promulgated rules.

2 (d) The vice chancellor supervises employees at the commission offices involved in human  
3 resources functions, including the professional, administrative, clerical and other employees  
4 necessary to carry out assigned powers and duties. In consultation with the Vice Chancellor for  
5 Administration and the chancellors, the vice chancellor shall delineate staff responsibilities as  
6 considered desirable and appropriate.

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

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

15 (2) Chairing, or designating a qualified designee to chair the Job Classification Committee  
16 and the Compensation Planning and Review Committee established by sections four and five, article  
17 nine-a of this chapter.

18 (3) Assuming responsibility for coordinating ~~compensation and~~ benefits programs for all  
19 employees, including designing these programs, and for supporting each higher education  
20 organization in implementing the programs;

21 (4) Assuming responsibility for coordinating classification and compensation programs for

[COM. SUB. FOR S. B. NO. 439]

1 classified employees, including designing these programs, and for supporting each higher education  
2 organization in implementing the programs;

3 (5) Assisting, as directed or requested, organizations with classification and/or compensation  
4 programs for faculty and/or nonclassified employees, including, as appropriate, design and  
5 implementation of the programs;

6 ~~(4)~~ (6) Maintaining consistent human resources information systems and selecting and  
7 supervising benefits consultants, brokers, trustees and necessary legal assistants;

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

12 ~~(6)~~ (8) Ensuring that market comparison studies are conducted for ~~each class of~~ classified  
13 employees and providing a report annually to from data collected from each organization on the  
14 status of ~~relative market equity~~ compensation among the employee classifications.

15 ~~(7)~~ (9) Carrying As requested by organizations, assist with carrying out the following duties  
16 related to training and development:

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

[COM. SUB. FOR S. B. NO. 439]

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

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

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

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

9 ~~(8)~~ (10) Conducting As requested, assisting boards of governors and/or presidents in  
10 conducting performance reviews of personnel who administer human resources functions at each  
11 organization in relation to best practices pursuant to articles seven, eight, nine and nine-a of this  
12 chapter and rules of the commission and council. Human resources personnel at each organization  
13 shall be evaluated at least once within each three-year period. ~~The~~ Copies of evaluations will be  
14 submitted to the Vice Chancellor who shall analyze the results of these evaluations and target  
15 training and professional development to identified areas of deficiency.

16 (f) To assist in performing the duties of vice chancellor, the commission, with the consent  
17 of the council, shall employ a generalist/manager who is well qualified in the field of human  
18 resources. The position reports to the Vice Chancellor for Human Resources. ~~and shall be filled on~~  
19 ~~a permanent basis by September 1, 2011.~~ The successful candidate is responsible for a wide range  
20 of human resources management, reporting and development activities and works collaboratively  
21 with governing boards and their employees at all levels.

1 **ARTICLE 7. PERSONNEL GENERALLY.**

2 **§18B-7-1. Legislative intent and purpose.**

3 (a) The intent of the Legislature in enacting this article and articles eight, nine and nine-a of  
4 this chapter is to establish a statewide, integrated higher education human resources ~~structure~~ system  
5 capable of, but not limited to, meeting the following objectives:

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

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

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

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

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

15 (6) Providing for institutional flexibility with meaningful accountability;

16 (7) Adhering to federal and state laws;

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

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

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

21 (b) To accomplish these goals, the Legislature encourages organizations to pursue a human

[COM. SUB. FOR S. B. NO. 439]

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

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

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

14 **§18B-7-2. Definitions.**

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

18 (a) “Benefits” means programs that an employer uses to supplement the cash compensation  
19 of employees and includes health and welfare plans, retirement plans, pay for time not worked and  
20 other employee perquisites.

21 (b) “Compensation” means cash provided by an employer to an employee for services

[COM. SUB. FOR S. B. NO. 439]

1 rendered.

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

6 (d) “Employee classification” or “employee class” means those employees designated as  
7 classified employees; nonclassified employees, including presidents, chief executives and top level  
8 administrators and faculty, as these terms are defined in this article and articles eight, nine and nine-a  
9 of this chapter.

10 “Full-time” means an employee whose employment, if continued, accumulates to a minimum  
11 total of one thousand forty hours during a calendar year and extends over at least nine months of a  
12 calendar year

13 (e) “Health and welfare benefit plan” means an arrangement which provides any of the  
14 following: Medical, dental, visual, psychiatric or long-term health care, life insurance, accidental  
15 death or dismemberment benefits, disability benefits or comparable benefits.

16 ~~(f) “Relative market equity” means the relative market status of each employee classification~~  
17 ~~at an organization falls within five percent of all other employee classifications within the~~  
18 ~~organization for the preceding three-year period.~~

19 ~~(g) “Relative market status” means the calculated relationship between the average salary of~~  
20 ~~each employee classification and its peer group.~~

21 **§18B-7-8. Reporting.**

[COM. SUB. FOR S. B. NO. 439]

1 ~~(a) Implementation reports. ---~~

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

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

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

12 ~~(3) A systematic plan, including a time line, for designing, developing, and implementing the~~  
13 ~~classification and compensation system contained in this article and articles eight, nine and nine-a~~  
14 ~~of this chapter;~~

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

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

20 ~~(6) Detailed data disaggregated by organization and employee category or classification,~~  
21 ~~comparing funding for salaries of faculty, classified employees and nonclassified employees as a~~

[COM. SUB. FOR S. B. NO. 439]

1 ~~percentage of the average funding for each of these classes or categories of employees among the~~  
2 ~~organization's peers, in regional or national markets, as appropriate, and among similar organizations~~  
3 ~~within the state systems of public higher education;~~

4 and

5 ~~(7) Other data requested by the Legislature or considered appropriate by the commission or~~  
6 ~~council.~~

7 ~~(b)~~ (a) *Annual personnel reports.* --

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

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

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

18 (2) The commission and council shall prepare a human resources report card summarizing  
19 the performance of organizations on key human resources measures established by the commission  
20 and council. The report card shall be presented to the Legislative Oversight Commission on  
21 Education Accountability ~~no later than December 1, 2012, and annually thereafter,~~ and shall be made

[COM. SUB. FOR S. B. NO. 439]

1 available to the general public. At a minimum, the human resources report card shall contain the  
2 following data:

3 (A) Human resources department metrics by organization:

4 (i) Number of human resources staff;

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

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

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

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

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

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

12 (B) Human resources expense data:

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

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

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

16 (C) Compensation data:

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

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

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

20 (D) System metrics:

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

[COM. SUB. FOR S. B. NO. 439]

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

3 (E) An account of the total amount, type of training or professional development provided,  
4 the number of employees who participated and the overall cost of the training and professional  
5 development provided to employees pursuant to section six of this article; and

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

9 ~~(e)~~ (b) *Job classification system report.* --

10 By July 1, ~~2014~~ 2016, and at least once within each five-year period thereafter, the  
11 commission and council jointly shall review the effectiveness of the system for classifying jobs and  
12 submit an in-depth report to the Legislative Oversight Commission on Education Accountability.  
13 The report shall include, but is not limited to, findings, recommendations and supporting  
14 documentation regarding the following job classification issues:

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

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

19 ~~(d)~~ (c) It is the responsibility of the head of human resources for each organization to prepare  
20 and submit to the president or chief executive officer all human resources data requested by the  
21 commission and council. The president or executive officer of each organization shall submit the

[COM. SUB. FOR S. B. NO. 439]

1 requested data at times established by the commission and council.

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

4       (1) The commission and council shall use the most recent data available and, as appropriate,  
5 shall benchmark it against ~~national and regional markets or peer data~~ best practices and appropriate  
6 labor markets; and

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

11 **§18B-7-9. Human resources reviews.**

12       (a) The commission and council jointly shall conduct an initial human resources review of  
13 each organization to be carried out, subject to legislative appropriation, by an external vendor  
14 possessing experience and expertise in conducting these reviews. The initial review shall be  
15 completed by October 1, 2011, and shall be designed to compare current human resources practices  
16 at each organization to best practices to identify areas of strength or deficiency, to identify functions  
17 that should be the responsibility of the human resources department, but are incorrectly assigned or  
18 carried out by other offices within each organization, to assist in targeting employee training and  
19 development, to determine the degree to which organizations are adhering to state and federal laws  
20 related to human resources administration and to provide data necessary to guide policymakers in  
21 developing personnel rules and implementing the classification and compensation system.

[COM. SUB. FOR S. B. NO. 439]

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

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

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

10 **§18B-7-11. Employees designated as nonclassified; limits; reports required.**

11 (a) Notwithstanding any provision of this code to the contrary, by July 1, ~~2015,~~ 2016, the  
12 percentage of personnel placed in the category of nonclassified at a higher education organization  
13 may not exceed ~~twenty~~ twenty-five percent of the total number of classified and nonclassified  
14 employees of that organization as those terms are defined in section two, article nine-a of this chapter  
15 and who are eligible for membership in a state retirement system of the State of West Virginia or  
16 other retirement plan authorized by the state.

17 A higher education organization which has more than ~~twenty~~ twenty-five percent of its  
18 employees placed in the nonclassified category as defined by this subsection on July 1, ~~2011~~ 2015,  
19 shall reduce the number of nonclassified employees to no more than twenty-five percent by July 1,  
20 ~~2013~~ 2016, and to no more than twenty percent by July 1, ~~2015~~, except as set forth in subsections  
21 ~~(b) and (c) of this section.~~

[COM. SUB. FOR S. B. NO. 439]

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

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

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

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

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

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

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

[COM. SUB. FOR S. B. NO. 439]

1           ~~(2)~~ (c) *Powers and duties of commission and council regarding nonclassified staff ratios. –*

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

5           ~~(B)~~ (A) The commission and council shall provide advice and technical assistance to  
6 organizations under their respective jurisdictions in collecting and interpreting data to ensure that  
7 they fulfill the requirements established by this section. Consideration of these issues shall be made  
8 part of each review required by section nine of this article and information from the review included  
9 in the reports required by subsection (a) ~~and (b)~~, section eight of this article;

10           ~~(C)~~ (B) The chancellors shall monitor the progress of the organizations in meeting the  
11 deadlines established in this section and shall report ~~periodically to the council and commission. The~~  
12 ~~commission and council shall make a preliminary compliance report to the Legislative Oversight~~  
13 ~~Commission on Education Accountability by September 1, 2013, and a final report on organization~~  
14 ~~compliance to that body by September 1, 2015. such in the annual human resources report card.~~

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

19           ~~(d)~~ (c) The current annual salary of a nonclassified employee may not be reduced if his or her  
20 position is redefined as a classified position solely to meet the requirements of this section. If such  
21 a nonclassified employee is reclassified, his or her salary does not constitute evidence of inequitable

[COM. SUB. FOR S. B. NO. 439]

1 compensation in comparison to other employees in the same pay grade.

2 ~~(e)~~ (d) For the purposes of this section only the commission and council are not considered  
3 higher education organizations.

4 **§18B-7-16. Study of employment practices.**

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

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

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

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

16 ~~(A) A current database of outsourcing practices followed by each organization including  
17 procedures or rules developed to inform policy decisions;~~

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

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

[COM. SUB. FOR S. B. NO. 439]

1           (3) Determining the appropriate definition of a “nonclassified” position, recommending a  
2 best practice criteria for designating positions as nonclassified and recommending the appropriate  
3 number or ratio of nonclassified positions for commission and council organizations.

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

7           (b) The commission and council shall complete the work and report their findings,  
8 conclusions and recommendations, together with drafts of any legislation necessary to effectuate the  
9 recommendations, to the Legislative Oversight Commission on Education Accountability upon  
10 completion, but no later than January 1, 2012 2018.

11 **ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE SALARY SCHEDULE;**  
12 **CLASSIFICATION AND COMPENSATION SYSTEM.**

13 **§18B-9-1. Legislative purpose and intent.**

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

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

[COM. SUB. FOR S. B. NO. 439]

1           ~~(c) It is further the intent of the Legislature to encourage strongly that each organization~~  
2 ~~dedicate a portion of future tuition increases to fund the classified salary schedule and, after full~~  
3 ~~funding of the salary schedule is achieved, to move toward meeting salary goals for faculty,~~  
4 ~~classified and nonclassified employees.~~

5 **§18B-9-2. Definitions.**

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

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

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

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

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

20           ~~(e) "Personnel classification system" means the process of job categorization adopted by the~~  
21 ~~commission and council jointly by which job title, job description, pay grade and placement on the~~

[COM. SUB. FOR S. B. NO. 439]

1 ~~salary schedule are determined;~~

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

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

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

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 to establish the classification and  
19 compensation system for certain employees of higher education organizations and apply recognized  
20 best human resources practices in order to use available resources in the most effective and efficient  
21 manner for the benefit of the citizens of West Virginia.

[COM. SUB. FOR S. B. NO. 439]

1           It is further the intent of the Legislature to establish a plan that is fair, accountable, credible,  
2 transparent and systematic. In recognition of the importance of these qualities, this article, together  
3 with articles seven, eight and nine of this chapter, is designated and may be cited as “FACTs for  
4 Higher Education”.

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

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

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

13           ~~(3) Attract well-qualified and diverse job applicants and retain and motivate employees to~~  
14 ~~accomplish the goals, objectives and priorities identified in state law, rules of the commission and~~  
15 ~~council, the statewide master plans for higher education and the institutions’ compacts;~~

16           ~~(4) Retain and reward employees who make valuable contributions to state and organization~~  
17 ~~goals, objectives and priorities;~~

18           ~~(5)~~ (2) Compensate employees within an organization fairly in relation to one another;

19           ~~(6)~~ (3) Compensate employees across organizations who are performing similar work at  
20 similar wage rates;

21           ~~(7)~~ (4) Compensate employees at levels that are competitive with appropriate external

[COM. SUB. FOR S. B. NO. 439]

1 markets and are fiscally responsible; and

2 ~~(8)~~ (5) Improve the process for evaluating jobs, including, but not limited to, mandating  
3 training and development in best human resources practices and directing that key terms, job titles  
4 and evaluation forms are consistent across organizations; ~~and~~.

5 ~~(9)~~ (c) It is further the intent of the Legislature to ~~Ensure~~ ensure that regular ~~market salary~~  
6 compensation analyses are performed to determine how organization compensation for all classes  
7 of employees compares to compensation in relevant external markets.

8 **§18B-9A-2. Definitions.**

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

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

13 ~~(b)~~ “Classified employee” or “employee” means ~~any regular employee of an organization~~  
14 ~~who holds a position that is assigned a particular job and job title within the classification system~~  
15 ~~established by this article, article nine and by duly promulgated and adopted rules of the commission~~  
16 ~~and council.~~ a regular full-time or regular part-time employee of an organization who holds a  
17 position that is assigned a particular job title and pay grade in accordance with the personnel  
18 classification and compensation system established by this article or by the commission and council.

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

21 ~~(d)~~ “Job description” or “position description” means a summary of the most important

[COM. SUB. FOR S. B. NO. 439]

1 features of a job, including the general nature and level of the work performed.

2 (e) “Job evaluation” means a ~~formal process used to create a job worth hierarchy~~ systematic  
3 way of determining the value/worth of a job in relation to other jobs in an organization by analyzing  
4 weighted compensable factors resulting in the assignment of a job title and pay grade to a position  
5 described by a position information questionnaire.

6 (f) “Job family” means a group of jobs having the same nature of work, but requiring  
7 different levels of skill, effort, responsibility or working conditions.

8 “Job specification” means the generic description of a group of jobs assigned a common job  
9 title in the classification system. The job specification contains a brief summary of the purpose of  
10 the job; the most common duties and responsibilities performed by positions holding the title;  
11 knowledge, skills and abilities necessary to perform the work; and minimum qualifications required  
12 for positions assigned the title.

13 (g) “Job title” means the descriptive name for the total collection of tasks, duties and  
14 responsibilities assigned to one or 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 of jobs in relation to each other  
17 within an organization.

18 “Midpoint differential” means the difference in wage rates paid in the midpoints of two  
19 adjacent pay grades. A midpoint differential is calculated by taking the difference between the two  
20 adjacent midpoints as a percentage of the lower of the midpoints.

21 (i) “Nonclassified employee” means an employee of an organization who holds a position

[COM. SUB. FOR S. B. NO. 439]

1 that is not assigned a particular job and job title within the classification system established by this  
2 article and article nine of this chapter, and by duly promulgated and adopted rules of the commission  
3 and council and who meets one or more of the following criteria:

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

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

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

9 (k) "Pay grade" means the level to which a job is assigned within a job worth hierarchy as  
10 a result of job evaluation.

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

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

15 (n) "Position information questionnaire" or "PIQ" means a tool used ~~in the creation and~~  
16 ~~evaluation of position descriptions and includes~~ to gather specific job information for a specific  
17 position held by an individual, and used for the purposes of evaluating the position for determination  
18 of job title and pay grade. The PIQ is used to gather information used to assess the compensable  
19 factors of knowledge, experience, complexity and problem solving, freedom of action, scope and  
20 effect, breadth of responsibility, intra-systems contacts, external contacts, direct supervision of  
21 personnel, indirect supervision of personnel and health, safety and physical considerations.

[COM. SUB. FOR S. B. NO. 439]

1 ~~(o) “Step” means a standard progression in pay rate that is established within a pay grade.~~

2 “Pay range spread” means the difference in the minimum and maximum rate of pay for a pay  
3 grade expressed as a percentage.

4 **§18B-9A-3. Applicability.**

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

8 ~~(b)~~ (a) Until the commission or council, as appropriate, has certified that an organization has  
9 achieved full funding of the temporary classified employee annual salary schedule or is making  
10 appropriate progress toward attaining full funding as defined by section three, article nine of this  
11 chapter, the organization is subject to article nine of this chapter and may not exercise flexibility  
12 provisions in any area of human resources identified in this chapter or in commission and council  
13 rule. Flexibility provisions include paying classified employees in excess of the salary established  
14 for their pay grade and years of experience indicated on the temporary classified employee annual  
15 salary schedule established by section three, article nine of this chapter. Additional flexibility  
16 provisions, such as the ability to modify the classified salary schedule at the organization level are  
17 identified and governed in section four, article nine of this chapter.

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

20 (a) The commission and council jointly shall maintain a uniform system for classifying jobs  
21 and positions of organization classified employees.

[COM. SUB. FOR S. B. NO. 439]

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

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

4 (A) A systematic method for appointing committee members who are representative of all  
5 the higher education organizations and affected constituent groups, including specifically providing  
6 for membership selections to be made from nominations from these higher education organizations  
7 and affected constituent groups;

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

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

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

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

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

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

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

[COM. SUB. FOR S. B. NO. 439]

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

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

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

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

9 (8) Determining appropriate career ladders within the classification system and establishing  
10 criteria for career progression; and

11 (9) Hearing job classification appeals prior to commencement of the formal grievance process  
12 pursuant to commission and council rule.

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

16 ~~(e) When evaluating jobs, the committee shall use the following procedure:~~

17 ~~(1) Each committee member shall classify each job individually, independently of other~~  
18 ~~members;~~

19 ~~(2) The chair shall compile and share the individual evaluations with the whole committee;~~  
20 ~~and~~

21 ~~(3) After discussing the issues and resolving differences, the committee shall make a~~

[COM. SUB. FOR S. B. NO. 439]

1 ~~determination of the appropriate classification for each job:~~

2       ~~(f)~~(e) The commission and council shall use ~~a point factor~~ an appropriate methodology to  
3 classify jobs. The commission and council jointly may adjust the job evaluation plan, including the  
4 factors used to classify jobs and their relative values, at any time.

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

7       ~~(h)~~(g) The commission and council shall develop a position information questionnaire to be  
8 used by all organizations to gather data necessary for classification of positions within the job worth  
9 hierarchy.

10 **§18B-9A-5. Compensation planning and review committee established; membership;**  
11 **meetings; powers and duties.**

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

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

17       The rule shall contain the following requirements related to the compensation planning and  
18 review committee:

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

[COM. SUB. FOR S. B. NO. 439]

1 affected constituent groups; and

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

4 ~~(3)~~ (2) A requirement that an organization may have no more than two members serving on  
5 the committee at any time and the combined membership representing various groups or divisions  
6 within or affiliated with an organization in total may not constitute a majority of the membership;  
7 and

8 ~~(4)~~ (3) A requirement that committee members serve staggered terms. One third of the initial  
9 appointments shall be for two years, one third for three years and one third for four years.  
10 Thereafter, the term is four years. A member may not serve more than four years consecutively.

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

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

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

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

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

[COM. SUB. FOR S. B. NO. 439]

1 (3) Overseeing the annual internal market review;

2 (4) Meeting at least annually with the Job Classification Committee to discuss benchmark  
3 jobs to be included in salary surveys, market “hot jobs” that may require a temporary salary  
4 adjustment, results of job family reviews and assessment of current job titles within the classification  
5 system for market matches and other issues as the Vice Chancellor for Human Resources, in  
6 consultation with the chancellors, determines to be appropriate; and

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

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

12 **§18B-9A-5a. Restriction on duties of job classification committee and compensation planning  
13 and review committee.**

14 The commission and council may not delegate any of the following duties to the  
15 Compensation Planning and Review Committee or the Job Classification Committee:

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

17 (2) Approval of the job evaluation plan; and

18 (3) Approval of the annual classified salary schedule.

19 **§18B-9A-6. Salary structure and salary schedules.**

20 (a) The commission and council shall develop and maintain a ~~market salary structure and~~  
21 ~~minimum salary schedules~~ classified salary schedule and ensure that all organizations under their

[COM. SUB. FOR S. B. NO. 439]

1 respective jurisdictions adhere to state and federal laws and duly promulgated and adopted  
2 organization rules.

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

5 ~~(1) Approval of a classification and compensation rule;~~

6 ~~(2) Approval of the job evaluation plan;~~

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

8 ~~(4) Approval of the annual minimum salary schedule.~~

9 (c) The ~~market salary structure~~ classified salary schedule serves as the basis for the following  
10 activities:

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

13 (2) Developing the minimum salary ~~schedules~~ per pay grade to be adopted by the commission  
14 and council.

15 (d) The ~~market salary structure~~ classified salary schedule shall meet the following criteria:

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

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

20 (3) Includes minimum and maximum ~~step~~ pay range values based on an established range  
21 spread, ~~as well as values for other steps in the salary structure.~~

[COM. SUB. FOR S. B. NO. 439]

1 (e) The commission and council jointly shall contract with an external vendor to conduct a  
2 classified employee market salary study at least once within each five-year period. At the conclusion  
3 of the study, or for good cause, the commission and council, in consultation with the Compensation  
4 Planning and Review Committee, may take any combination of the following actions:

5 (1) Adjust the number of pay grades and the point values necessary ~~for a job to be assigned~~  
6 ~~to a particular pay grade~~ to validate the result of the classification system and the job worth hierarchy  
7 with the market;

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

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

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

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

[COM. SUB. FOR S. B. NO. 439]

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

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

11 (h) The organization rule promulgated pursuant to subsection ~~(d)~~ (c), section seven of this  
12 article may provide for differential pay for certain employees who work different shifts, weekends  
13 or holidays.

14 **§18B-9A-7. Classification and compensation rules required.**

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

[COM. SUB. FOR S. B. NO. 439]

1 (b) ~~Classification and compensation system~~ System rule. --

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

10 (1) Organization accountability. --

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

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

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

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

20 (ii) When a major deficiency is identified, the commission or council, as appropriate, shall  
21 notify the governing board of the institution in writing, giving particulars of the deficiency and

[COM. SUB. FOR S. B. NO. 439]

1 outlining steps the governing board is required to take to correct the deficiency.

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

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

10 (f) ~~A formal reprimand shall be placed in the personnel file of each key administrator who~~  
11 ~~shares responsibility and has operational authority in the area of the identified deficiency, and~~

12 (H) ~~Other sanctions~~ Sanctions may include, but are not limited to, suspending new hiring by  
13 the organization and prohibiting compensation increases for key administrators who have authority  
14 over the areas of major deficiency until the identified deficiencies are corrected.

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

18 (2) *Employee Classified employee classification and compensation*. -- The classified  
19 employee classification and compensation system rule shall establish a classification and  
20 compensation system to accomplish the following objectives:

21 (A) ~~Moving classified employees through the classification system based on~~ Allowing for

[COM. SUB. FOR S. B. NO. 439]

1 performance and other objective, measurable factors ~~including~~ such as technical expertise, education,  
2 years of experience in higher education and experience above position requirements to be considered  
3 in compensation decisions;

4 (B) Achieving and maintaining appropriate levels of employee dispersion ~~across steps~~  
5 through a pay range;

6 (C) ~~Assigning each current employee to an initial step for his or her pay grade that is closest~~  
7 ~~to and exceeds his or her current salary regardless of previous education, experience or performance.~~

8 The rule shall provide that the salary of a current employee may not be reduced by a job  
9 reclassification, a modification of the market salary schedule or other conditions that the commission  
10 and the council consider appropriate and reasonable;

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

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

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

19 (G) Specifying that the acceptable period that may elapse between the time when an  
20 employee files a formal request for a position review and the time when the review is completed may  
21 not exceed forty-five days. An organization that fails to complete a review within the specified time

[COM. SUB. FOR S. B. NO. 439]

1 shall provide the employee back pay from the date the request for review was received if the review,  
2 when completed, produces a reclassification of the position into a job in a higher pay grade;

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

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

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

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

17 ~~(e) *Emergency rule.*---~~

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

[COM. SUB. FOR S. B. NO. 439]

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

4           ~~(d)~~ (c) *Organization rules.* --

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

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

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

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

[COM. SUB. FOR S. B. NO. 439]

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

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

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

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

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

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

---

(NOTE: The purpose of this bill is to clarify and update the law regarding higher education personnel generally and to clarify the roles of the Higher Education Policy Commission, the Community and Technical College Council, and higher education institutions, especially as it relates to classification and compensation.

Strike-throughs indicate language that would be stricken from the present law, and

**[COM. SUB. FOR S. B. NO. 439]**

underscoring indicates new language that would be added.

§18B-9A-5a is new; therefore, strike-throughs and underscoring have been omitted.)