

Senate Bill No. 439

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

[Introduced February 9, 2015; referred to the Committee on Education; and then to the
Committee on Finance.]

A BILL to repeal §18B-7-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-4-2a of said code; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-8, §18B-7-9 and §18B-7-11 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 article, designated §18B-9B-1, all relating to public education higher education personnel generally; clarifying roles of Higher Education Policy Commission, Council for Community and Technical College Education and state organizations of higher education; eliminating outdated and redundant reporting requirements; clarifying duties of vice chancellor for human resources of the Higher Education Policy Commission; mandating periodic human resource reviews by state organizations of higher education; providing legislative purposes and intent for higher education personnel; defining terms; providing for evaluation and reviews of organizations

1 for certain human resource deficiencies, best practices and compliance with state higher
2 education personnel laws; providing limitations relating to percentages of employees
3 designated as "nonclassified" with certain exceptions; establishing formulas for calculating
4 percentage of nonclassified employees; clarifying that certain provisions are only applicable
5 to classified employees; clarifying powers and duties of the Compensation Planning and
6 Review Committee; providing that the Higher Education Policy Commission shall develop
7 a model minimum salary schedule using West Virginia Workforce data that organizations
8 shall follow except in certain instances; eliminating requirement that salary schedules fall
9 within relative market equity; providing that the Higher Education Policy Commission in
10 developing salary schedules for classified employees shall consider equity and the amount
11 necessary to earn a living wage; providing for organizational accountability in human
12 resources and a mechanism by which state organizations of higher education may dispute
13 deficiency findings; providing state organizations of higher education with the ability to
14 propose and implement approved legislative rules relating to classification and compensation
15 with certain exceptions; requiring state organizations of higher education proposing
16 legislative rules create classification and compensation committees; and requiring any rule
17 proposed by a state organization of higher education incorporate best human resources
18 practices, address areas of accountability, employee classification and compensation and
19 performance evaluation.

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

21 That §18B-7-16 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-2A-

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

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

8 **§18B-2A-3. Supervision of governing boards; promulgation of rules; data collection and**
9 **dissemination.**

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

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

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

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

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

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

8 (2) WVNET, on behalf of the commission or council or both, shall generate reports from the
9 data accessed for the purposes set forth in section five, article one-a and sections eight and ten,
10 article one-d of this chapter.

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

13 **§18B-2A-4. Powers and duties of governing boards generally.**

14 Each governing board separately has the following powers and duties:

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

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

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

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

1 (A) A detailed demonstration of how the master plan will be used to meet the goals,
2 objectives and priorities of the compact;

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

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

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

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

18 (d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan and
19 compact, specific functions and responsibilities to achieve the goals, objectives and priorities
20 established in articles one and one-d of this chapter to meet the higher education needs of its area
21 of responsibility and to avoid unnecessary duplication;

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

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

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

13 (h) Ensure that the sequence and availability of academic programs and courses offered by
14 the institution under its jurisdiction is such that students have the maximum opportunity to complete
15 programs in the time frame normally associated with program completion. Each governing board
16 is responsible to see that the needs of nontraditional college-age students are appropriately addressed
17 and, to the extent it is possible for the individual governing board to control, to assure core course
18 work completed at the institution is transferable to any other state institution of higher education for
19 credit with the grade earned;

20 (I) Subject to article one-b of this chapter, approve the teacher education programs offered
21 in the institution under its control. In order to permit graduates of teacher education programs to

1 receive a degree from a nationally accredited program and in order to prevent expensive duplication
2 of program accreditation, the commission may select and use one nationally recognized teacher
3 education program accreditation standard as the appropriate standard for program evaluation;

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

6 (k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this chapter
7 and to rules adopted by the commission and the council, except as set forth in article nine-b of this
8 chapter, administer a system for the management of personnel matters, including, but not limited to,
9 discipline for employees at the institution under its jurisdiction;

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

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

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

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

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

21 (q) Submit to the commission or council, as appropriate, any data or reports requested by the

1 commission or council within the time frame set by the commission or council;

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

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

9 (t) Delegate, with prescribed standards and limitations, the part of its power and control over
10 the business affairs of the institution to the president in any case where it considers the delegation
11 necessary and prudent in order to enable the institution to function in a proper and expeditious
12 manner and to meet the requirements of its master plan and compact. If a governing board elects to
13 delegate any of its power and control under this subsection, it shall enter the delegation in the
14 minutes of the meeting when the decision was made and shall notify the commission or council, as
15 appropriate. Any delegation of power and control may be rescinded by the appropriate governing
16 board, the commission or council, as appropriate, at any time, in whole or in part, except that the
17 commission may not revoke delegations of authority made by the governing board of Marshall
18 University or West Virginia University;

19 (u) Unless changed by the commission or the council, as appropriate, continue to abide by
20 existing rules setting forth standards for accepting advanced placement credit for the institution
21 under its jurisdiction. Individual departments at a state institution of higher education, with approval

1 of the faculty senate, may require higher scores on the advanced placement test than scores
2 designated by the governing board when the credit is to be used toward meeting a requirement of the
3 core curriculum for a major in that department;

4 (v) Consult, cooperate and coordinate with the State Treasurer and the State Auditor to
5 update as necessary and maintain an efficient and cost-effective system for the financial management
6 and expenditure of appropriated and nonappropriated revenue at the institution under its jurisdiction.
7 The system shall ensure that properly submitted requests for payment are paid on or before the due
8 date but, in any event, within fifteen days of receipt in the State Auditor's Office;

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

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

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

1 administering the electronic system;

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

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

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

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

17 **ARTICLE 4. GENERAL ADMINISTRATION.**

18 **§18B-4-2a. Employment of Vice Chancellor for Human Resources; powers and duties**
19 **generally; staff; office.**

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

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

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

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

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

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

21 (d) The Vice Chancellor supervises employees at the commission offices involved in human

1 resources functions, including the professional, administrative, clerical and other employees
2 necessary to carry out assigned powers and duties. In consultation with the Vice Chancellor for
3 Administration and the chancellors, the Vice Chancellor shall delineate staff responsibilities as
4 considered desirable and appropriate.

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

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

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

15 ~~(3) Assuming responsibility for coordinating compensation and benefits programs for all~~
16 ~~employees, including designing these programs, and for supporting each higher education~~
17 ~~organization in implementing the programs;~~ Assisting, as directed or requested, organizations with
18 their compensation and benefits programs for all employees including, as appropriate, design and
19 implementation of the programs;

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

1 (5) Maintaining the classification system by providing for regular review of jobs to determine
2 whether the current job description accurately reflects the duties and responsibilities and whether the
3 job is properly classified or needs to be modified or deleted, as authorized pursuant to articles nine-a
4 and nine-b of this chapter. Every job shall be reviewed at least once within each five-year period;

5 (6) ~~Ensuring that market comparison studies are conducted for each class of employees and~~
6 ~~providing a report annually to each organization on the status of relative market equity among the~~
7 ~~employee classifications.~~ Ensuring that appropriate market comparison studies and/or analyses are
8 conducted for each class of employees and assimilating data once every three years from each
9 organization on the status of compensation among the employee classifications;

10 (7) ~~Carrying~~ As requested by an organization, carrying out the following duties related to
11 training and development:

12 (A) Analyzing and determining training needs of organization employees and formulating
13 and developing plans, procedures and programs to meet specific training needs and problems;
14 ~~Successful completion of these tasks requires the vice chancellor to work closely with and~~
15 ~~communicate regularly with the training and development coordinators employed by each~~
16 ~~organization;~~

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

19 (C) Planning, conducting, and coordinating management inventories, appraisals, placement,
20 counseling and training;

21 (D) ~~Coordinating participation by all employees in training programs developed internally~~

1 or provided by outside contractors; and

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

4 (8) ~~Conducting~~ As requested, assisting boards of Governors and institutions in conducting
5 performance reviews of personnel who administer human resources functions at each organization
6 in relation to best practices pursuant to articles seven, eight, nine and nine-a of this chapter and rules
7 of the commission and council. Human resources personnel at each organization shall be evaluated
8 by a president or designee at least once within each three-year period. The Vice Chancellor shall
9 analyze the results of these evaluations and target training and professional development to identified
10 areas of deficiency.

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

17 **ARTICLE 7. PERSONNEL GENERALLY.**

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

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

1 (1) Providing benefits to the citizens of the State of West Virginia by supporting the public
2 ~~policy agenda as articulated by state policymakers;~~ Maximizing the ability of organizations to attract,
3 recruit, retain, and motivate highly qualified and diverse employees, including compensating
4 employees within an organization fairly and at levels that are competitive with appropriate external
5 markets;

6 (2) Assuring fiscal responsibility by making the best use of scarce resources and facilitating
7 a system that reduces duplication and facilitates an efficient personnel decision-making process;

8 (3) Maximizing the satisfaction and engagement of employees within their jobs;

9 (4) Rewarding employees who have superior job performance and or otherwise make
10 valuable contributions toward the achievement of organizational goals, including objectives and
11 priorities identified in state law, applicable rules of the commission and council, the statewide master
12 plans for higher education, and the compact of the organization;

13 ~~(3)~~ (5) Promoting fairness, accountability, credibility, transparency and a systematic efficient
14 approach to progress (FACTS) in personnel decision-making;

15 ~~(4)~~ (6) Reducing, or, wherever possible, eliminating arbitrary and capricious decisions
16 affecting employees of higher education organizations as defined in section two, article nine-a of this
17 chapter; decision-making;

18 ~~(5)~~ (7) Creating a stable, self-regulating human resources system that is flexible, accountable,
19 and capable of evolving to meet changing needs;

20 (8) Providing incentives for organizations to collaborate with members of staff council to
21 adopt best practices in personnel decision-making;

1 (9) Providing current, reliable data to governing boards, the commission, the council, the
2 Governor, and the Legislature to inform the decision-making process of these policymakers;

3 (10) Improving the process for evaluating jobs, including, but not limited to, training and
4 development in best human resources practices and directing that key terms, job titles, and evaluation
5 forms facilitate the attraction, retention, and motivation of employees;

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

7 ~~(7)~~ (12) Adhering to federal and state laws;

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

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

10 (b) To accomplish these goals, the Legislature encourages organizations to pursue a human
11 resources ~~strategy~~ best practices which provides monetary and nonmonetary returns to employees
12 in exchange for their time, talents and efforts to meet articulated goals, objectives and priorities of
13 the state, the commission and council, and the organization. The system should maximize the
14 recruitment, motivation and retention of highly qualified employees, ensure satisfaction and
15 engagement of employees with their jobs, ensure job performance and achieve desired results.

16 **§18B-7-2. Definitions.**

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

20 ~~(a)~~ "Benefits" means programs that an employer uses to supplement the cash compensation
21 of employees and includes health and welfare plans, retirement plans, pay for time not worked and

1 other employee perquisites.

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

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

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

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

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

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

20 **§18B-7-8. Reporting.**

21 (a) ~~Implementation reports.—~~

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

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

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

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

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

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

19 ~~(6) Detailed data disaggregated by organization and employee category or classification,~~
20 ~~comparing funding for salaries of faculty, classified employees and nonclassified employees as a~~
21 ~~percentage of the average funding for each of these classes or categories of employees among the~~

1 organization's peers, in regional or national markets, as appropriate, and among similar organizations
 2 within the state systems of public higher education; and

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

5 ~~(b)~~ (a) *Annual personnel reports.* –

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

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

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

17 (2) The commission and council shall prepare a human resources report card summarizing
 18 the performance of organizations on ~~key human resources measures.~~ best practices and compliance
 19 with this article and articles eight, nine, and nine-a of this chapter and any rules promulgated
 20 pursuant thereto. The report card shall be presented to the Legislative Oversight Commission on
 21 Education Accountability no later than December 1, 2012, and ~~annually~~ thereafter following

1 completion of the review required by section nine of this article for a particular organization, and
2 shall be made available to the general public. At a minimum, the human resources report card shall
3 contain the following data:

4 (A) Human resources department metrics by organization:

5 (I) Number of human resources staff;

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

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

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

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

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

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

13 (B) Human resources expense data:

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

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

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

17 (C) Compensation data:

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

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

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

21 (D) System metrics:

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

4 (E) An account of the total amount, type of training or professional development provided,

5 the number of employees who participated and the overall cost of the training and professional

6 development provided to employees pursuant to section six of this article; and

7 ~~(F) Other measures the commission or council considers appropriate to assist policymakers~~

8 ~~in evaluating the degree of success in implementing best human resources practices by higher~~

9 ~~education organizations.~~

10 ~~(e)~~ (b) *Job classification system report.* –

11 By July 1, 2014, and at least once within each five-year period thereafter, the commission

12 and council jointly shall review the effectiveness of the system for classifying jobs and submit an

13 in-depth report to the Legislative Oversight Commission on Education Accountability. The report

14 shall include, but is not limited to, findings, recommendations and supporting documentation

15 regarding the following job classification issues:

16 (A) The effectiveness of the point factor methodology and a determination of whether it

17 should be maintained; and

18 (B) The status of the job evaluation plan, including the factors used to classify jobs or their

19 relative values, and a determination of whether the plan should be adjusted.

20 ~~(d)~~ (c) It is the responsibility of the head of human resources for each organization to prepare

21 and submit to the president or chief executive officer all human resources data requested by the

1 commission and council. The president or executive officer of each organization shall submit the
2 requested data at times established by the commission and council.

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

5 (1) The commission and council shall use the most recent data available and, as appropriate,
6 shall benchmark it against ~~national and regional~~ appropriate markets or peer data; 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~~ 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~~ the applicable provisions of this article and articles eight,
21 nine, nine-a, and nine-b of this chapter and to provide data necessary to guide policymakers in

1 developing personnel rules and implementing the classification and compensation system.

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

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

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

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

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

20 ~~A higher education organization which has more than twenty percent of its employees placed~~
21 ~~in the nonclassified category as defined by this subsection on July 1, 2011, shall reduce the number~~

1 of nonclassified employees to no more than twenty-five percent by July 1, 2013, and to no more than
2 twenty percent by July 1, 2015, except as set forth in subsections (b) and (c) of this section.

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

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

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

13 (c) ~~(b)~~ An organization may place up to twenty-five more than twenty percent of the total
14 number of classified and nonclassified employees of that organization as defined by this section
15 employees of that institutions who are eligible for membership in any state retirement system of the
16 State of West Virginia or other retirement plan authorized by the state in the nonclassified category
17 under the following conditions:

18 (1) ~~The~~ If the governing board of an institution votes consults with the staff council of the
19 organization, provides staff counsel with notice and the opportunity to be heard at a nonemergency
20 meeting, votes in a nonemergency meeting to approve any percentage or fraction of a percentage
21 number above twenty percent and seeks and receives the approval of the commission or council, as

1 appropriate, before increasing the total above twenty percent provides in the record of the meeting
 2 a justification for the increase above twenty percent.

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

6 ~~(B) The~~ However, the number of nonclassified personnel may not be increased above ~~twenty~~
 7 twenty-five percent unless the increase is approved by ~~both the commission and~~ or the council as
 8 applicable to the organization.

9 ~~(2) Powers and duties of commission and council regarding nonclassified staff ratios. —~~

10 ~~(A)~~ (c) It is the duty of the commission and council jointly to establish criteria for the purpose
 11 of making decisions on approving or disapproving requests by organizations to exceed the ~~twenty~~
 12 twenty-five percent limit for personnel placed in the nonclassified category.

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

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

1 ~~compliance to that body by September 1, 2015.~~

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

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

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

12 **ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION**
13 **SYSTEM.**

14 **§18B-9-1. Legislative intent.**

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

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

1 provisions of this article until full funding is reached.

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

6 **§18B-9-2. Definitions.**

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

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

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

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

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

21 ~~(e) "Personnel classification system" means the process of job categorization adopted by the~~

1 ~~commission and council jointly~~ by which job title, job description, pay grade and placement on the
2 salary schedule are determined;

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

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

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

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

18 **§18B-9A-1. Legislative intent.**

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

1 manner for the benefit of the citizens of West Virginia.

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

6 ~~(b) In furtherance of the principles described in subsection (a) of this section, the chief~~
7 ~~purposes of the classification and compensation system are to accomplish the following 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) Compensate employees within an organization fairly in relation to one another;~~

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

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

1 and are fiscally responsible;

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

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

7 **§18B-9A-2. Definitions.**

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

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

13 (ⓑ) "Classified employee" ~~or "employee"~~ means any regular employee of an organization who
14 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.~~

17 "Nonexempt classified hourly employee" means a classified employee whose compensation
18 is based on the number of hours worked per pay period.

19 "Exempt classified salaried employee" means a classified employee whose compensation is
20 set and not based on the number of hours worked per pay period.

21 (ⓔ) "Job" means the total collection of tasks, duties and responsibilities assigned to one or

1 more individuals whose work is of the same nature and level.

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

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

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

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

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

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

16 (1) ~~Holds a direct~~ Is responsible for policy-making position at the department or organization
17 level; ~~or~~

18 (2) Reports directly to the president or chief executive officer of the organization; or

19 (3) Is in a position considered critical by the president, which may be defined by policies
20 adopted by the governing board.

21 (j) "Organization" means the commission, the council, an agency or entity under the

1 respective jurisdiction of the commission or the council or a state institution of higher education as
2 defined in section two, article one of this chapter.

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

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

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

8 (~~n~~) "Position information questionnaire" or "PIQ" means a tool used in the creation and
9 evaluation of position descriptions and includes the factors of knowledge, experience, complexity
10 and problem solving, freedom of action, scope and effect, breadth of responsibility, intra-systems
11 contacts, external contacts, direct supervision of personnel, indirect supervision of personnel and
12 health, safety and physical considerations.

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

14 **§18B-9A-3. Applicability.**

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

18 (b) Until the commission or council, as appropriate, has certified that an organization has
19 achieved full funding of the temporary classified employee annual salary schedule or is making
20 appropriate progress toward attaining full funding as defined by section three, article nine of this
21 chapter, the organization is subject to article nine of this chapter and may not exercise flexibility

1 provisions in any area of human resources identified in this chapter or in commission and council
2 rule.

3 **§18B-9A-4. Job classification system; job classification committee established; membership;**
4 **meetings; powers and duties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **§18B-9A-5. Compensation planning and review committee established; membership;**
16 **meetings; powers and duties.**

17 (a) Pursuant to the rule authorized in section seven of this article, the commission and council
18 jointly shall establish and maintain a compensation planning and review committee for classified
19 employees.

20 (b) Within the guidelines established in this article and articles seven, eight and nine of this
21 chapter, the committee shall manage all aspects of compensation planning and review for classified

1 employees that the commission and council jointly delegate to it.

2 The rule shall contain the following requirements related to the compensation planning and
3 review committee:

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

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

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

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

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

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

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

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

6 (2) Overseeing the ~~five-year external~~ organization's market salary study studies;

7 (3) Overseeing the annual internal market review;

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

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

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

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

19 (a) The commission and council shall develop and maintain a market salary structure, ~~and~~
20 which shall include a minimum salary schedule and a market range analysis for classified
21 employees and ensure that all organizations under their respective jurisdictions adhere to ~~state and~~

1 ~~federal laws~~ this chapter and duly promulgated and adopted organization rules.

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

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

5 (2) Approval of the job evaluation plan;

6 (3) Approval of the annual market ~~salary schedule~~ range analysis; and

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

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

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

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

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

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

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

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

19 (e) The commission and council shall jointly ~~shall contract with an external vendor to~~
20 conduct a classified employee market salary study at least once within each five-year period, utilizing
21 West Virginia Workforce data as the market reference. At the conclusion of the study, the

1 commission and council, in consultation with the Compensation Planning and Review Committee,
2 may take any combination of the following actions:

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

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

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

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

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

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

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

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

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

9 (I) If an organization is compensating employees at a level below the minimum salary
 10 schedule adopted by the council and the commission, the Board of Governors of the organization
 11 shall submit to the council and the commission a plan to correct the deficiency or good cause as to
 12 why the minimum salary schedule cannot be achieved.

13 (j) Organizations retain all authority and power to establish the level of compensation for
 14 classified employees in relation to the market range analysis.

15 **§18B-9A-7. Classification and compensation rules required; emergency rule authorized.**

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

1 received and approved by the Select Committee on January 11, 2010.

2 (b) *Classification and compensation system rule.* –

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

11 (1) *Organization accountability.* –

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

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

17 (B) Applying sanctions when major deficiencies not disputed by an organization are not
18 corrected within the allotted time:

19 (I) For purposes of this subsection, a major deficiency means an organization has failed to
20 comply with ~~federal or state law or with~~ articles seven, eight, nine, nine-b, and this article of this
21 chapter and with applicable personnel rules of the commission and council adopted pursuant to those

1 articles.

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

5 (iii) ~~The~~ If not disputed, the governing board shall correct the major deficiency within four
6 months, or longer if agreed to by the organization, the commission or council, as appropriate, and
7 shall notify the commission or council, as appropriate, when the deficiency has been corrected.

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

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

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

17 (v) If a governing board disputes that a deficiency identified by the commission exists, then
18 it shall provide to the Legislative Oversight Commission on Education and the Arts a description of
19 the disputed deficiency and an explanation as to why no action is warranted to correct the alleged
20 deficiency.

21 (C) Certifying that an organization has achieved full funding of the temporary annual

1 classified employee salary schedule or is making appropriate progress toward achieving full funding
2 pursuant to section three, article nine of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

20 (c) *Emergency rule.* --

21 (1) The Legislature hereby finds that an emergency exists and, therefore, the commission and

1 council shall propose a joint emergency rule or rules by November 1, 2011, in accordance with
2 article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and
3 articles seven, eight and nine of this chapter.

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

7 (d) *Organization rules.* --

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

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

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

21 (4) If an organization fails to adopt a rule or rules as mandated by this subsection, the

1 commission and council may prohibit it from exercising any flexibility or implementing any
2 discretionary provision relating to human resources contained in statute or in a commission or
3 council rule until the organization's rule requirements have been met.

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

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

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

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

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

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

1 **ARTICLE 9B. ORGANIZATION CLASSIFICATION AND COMPENSATION RULES.**

2 **§18B-9B-1. Flexibility to adopt personnel rules; emergency rule authorized.**

3 (a) In lieu of following commission and council rules adopted under articles seven, eight,
4 nine, and nine-a of this chapter, an organization may file a rule or rules for legislative approval in
5 accordance with article three-a, chapter twenty-nine-a of this code to implement articles seven, eight,
6 and nine of this chapter, as applicable to the particular organization, and sections one, two, and three
7 of article nine-a of this chapter. However, the organization may not file rules relating to sections
8 eight and nine, article seven of this chapter relating specifically to reporting and reviewing
9 requirements of the commission and council.

10 (b) Once the rule proposed pursuant to this section is approved, then the organization is no
11 longer subject to rules promulgated by the commission or the council pursuant to articles seven,
12 eight, nine, and nine-a of this chapter, except for sections eight and nine, article seven of this chapter
13 relating specifically to reporting and reviewing requirements of the commission and council and
14 section seven, article nine-a of this chapter relating specifically to organization accountability.

15 (c) The rule proposed shall establish a classification and compensation system that
16 incorporates best human resources practices and shall address the areas of organization
17 accountability, employee classification and compensation, performance evaluation, and development
18 of organization policies consistent with this article, articles seven, eight and nine of this code, to the
19 extent applicable to the organization.

20 (d) Rules proposed pursuant to this section are not subject to sections four, five, six, seven,
21 and eight, chapter nine-a of this chapter, and instead shall implement subsections (e), (f), (g), (h),

1 (I), (j), and (k) of this section.

2 (e) *Employee classification and compensation.* -- The rule proposed pursuant to this article
3 shall establish a classification and compensation system to accomplish the following objectives,
4 including best practices consistent with those objectives:

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

8 (2) Avoiding salary compression;

9 (3) Assigning each current employee to an initial step, similar placement, or comparable best
10 practice for his or her pay grade that is closest to and exceeds his or her current salary regardless of
11 previous education, experience or performance. The rule shall provide that the salary of a current
12 employee may not be reduced by a job reclassification or a modification of the market salary
13 schedule;

14 (4) Establishing a job worth hierarchy and identifying the factors to be used to classify jobs
15 and their relative values or comparable best practice and determining the requirements that are
16 necessary to assign a job to a particular pay grade;

17 (5) Establishing an objective standard to be used in determining when a job description or
18 a position description is up-to-date;

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

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

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

10 (9) Providing for recommendations from the organization Compensation Planning and
11 Review Committee and the organization Job Classification Committee to be considered by the
12 governing board or designee; and

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

16 (g) The rule shall establish a job classification committee, which shall be comprised of
17 administration officials and affected constituent groups of the organization, including staff council
18 of the organization, as appointed by the president. The committee shall have the following powers
19 and duties:

20 (1) Creating, modifying, assigning, and deleting jobs and job titles;

21 (2) Reviewing and revising job titles to make them consistent, including adopting consistent

1 title abbreviations;

2 (3) Establishing job worth hierarchies and data lines or comparable metrics for each job title;

3 (4) Classifying jobs, establishing proper pay grades, and placing jobs in pay grades consistent
4 with a job evaluation plan;

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

6 (6) Recommending base pay enhancements for jobs with significantly lower salaries than
7 external market pricing;

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

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

11 (9) Hearing job classification appeals prior to commencement of the formal grievance
12 process;

13 (10) Developing a methodology to classify jobs; and

14 (11) Using a position information questionnaire for data necessary for classification of
15 positions within the job worth hierarchy.

16 (h) The rule shall establish a compensation planning and review committee for classified
17 staff, which shall be comprised of affected constituent groups, including from staff council of the
18 organization, and administrative officials, as appointed by the president. The Compensation Planning
19 and Review Committee has powers and duties which include, but are not limited to, the following:

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

- 1 (2) Making recommendation's regarding market salary studies;
- 2 (3) Making recommendations regarding internal market reviews; and
- 3 (4) Meeting at least annually with the organization's Job Classification Committee to discuss
- 4 results of job family reviews and assessment of current job titles within the classification system for
- 5 market matches and other issues as the president or designee determines to be appropriate.

6 (I) The rule shall establish a process by which organizations shall maintain a market salary

7 structure and minimum salary levels for classified staff that adheres to state and federal laws.

8 (j) The rule shall establish a process for a classified employee market salary study by an

9 external vendor at least once within each five-year period. At the conclusion of the study or at any

10 intervening time as established by board rule, the organization may take any combination of the

11 following actions:

12 (1) Adjust the number of pay grades and the factors necessary for a job to be assigned to a

13 particular pay grade;

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

15 or

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

17 (k) The organization rule may provide for differential pay for certain employees who work

18 different shifts, weekends or holidays and for differential treatment for nonexempt classified hourly

19 employees and exempt classified salaried employees. *However* any rules adopted pursuant to this

20 article shall be consistent with article two, chapter six-c of this code.

NOTE: The purpose of this bill is to clarify the roles of each institution of higher learning, the Higher Education Policy Commission, and the Council for Community and Technical College Education by creating a system whereby legislative policy maximizes the ability of organizations to attract, recruit, retain, and motivate highly qualified and diverse employees, including compensating employees within an organization fairly and at levels that are competitive with appropriate external markets. The bill sets forth certain specific powers, duties, and limitations of the Higher Education Policy Commission, the Council for Community and Technical College Education whereby those entities provide appropriate oversight without redundancy and the provides certain human resources services to the institutions.

§18B-7-16 is repealed.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Article 9B is new; therefore, strike-throughs and underscoring have been omitted.