

**Senate Bill No. 330**

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

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

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A BILL to repeal §18-13-1 of the Code of West Virginia, 1931, as amended; to repeal §18-23-4a of said code; to repeal §18B-8-3a of said code; to repeal §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code; to amend and reenact §12-1-12d of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-4 and §18B-1B-5 of said code; to amend and reenact §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code; to amend and reenact §18B-2B-3 of said code; to amend and reenact §18B-3-1, §18B-3-3 and §18B-3-4 of said code; to amend and reenact §18B-4-1 of said code; to amend said code by adding thereto a new section, designated §18B-4-2a; to amend and reenact §18B-5-9 of said code; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code; to amend said code by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; to amend and reenact §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code; to amend said code by adding thereto a new section, designated §18B-8-2; to amend and reenact §18B-9-1, §18B-9-2,

§18B-9-3 and §18B-9-4 of said code; to amend said code by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8; to amend and reenact §18B-10-1 of said code; and to amend and reenact §18B-19-10 of said code, all relating to public higher education personnel generally; state organizations of higher education; public higher education governance; repealing sunset provision for pilot investment program for Marshall University and West Virginia University; extending authority to increase certain types of investment under certain circumstances; specifying and clarifying rule-making procedures; specifying certain powers and duties of certain higher education organizations; requiring certain governing boards to reach certain graduation rates by certain date; establishing classification and compensation for certain employees; providing legislative purposes and intent; providing certain definitions; requiring creation of certain professional staff positions; setting forth minimum qualifications and specifying duties; requiring organization rulemaking; authorizing certain supplemental retirement, health and welfare benefit plans for certain employees; providing for certain employer and employee matches; authorizing employee payroll deductions; requiring establishment of continuing education and professional development programs for certain employees; setting forth certain employment practices; requiring certain periodic reports; specifying data to be included in reports and designating report due dates; providing certain exceptions to report due dates; requiring periodic reviews of human resources functions at certain higher education organizations; setting forth purposes of reviews; specifying review criteria and designating completion dates; requiring prior notice of reviews and setting forth certain exceptions; authorizing compensatory time off for certain employees in certain instances; setting forth conditions; defining “nonclassified” employees; limiting percentage of employees designated as nonclassified and providing certain exceptions; establishing formula for calculating percentage; providing effective date for meeting percentage limits and

requiring compliance reports; authorizing certain employment by mutual agreement; setting forth terms, conditions and applicability of agreements; requiring probationary period for certain employees; authorizing catastrophic leave banks and leave transfer for certain employees; setting forth terms and conditions for participation; codifying certain current practices; authorizing merit salary increases for certain employees under certain conditions; requiring study of certain employment practices; requiring report and specifying data and report due date; requiring faculty salary rules and providing for salary increases in certain instances; authorizing sabbatical leaves for certain professional personnel; specifying terms and conditions for participation; maintaining certain rights and benefits during leaves of absence under certain circumstances; requiring definition of certain terms; requiring notice of employment decisions to probationary faculty members by certain date and providing for hearings in certain instances; stating legislative intent regarding funding for certain employee salary schedules; specifying applicability of certain statutes; establishing certain terms and conditions and providing certain exceptions; providing formulas for making certain salary calculations; requiring certification of certain higher education organizations relating to certain salary funding requirements; specifying applicability of certain rules; requiring review and approval process for certain rules and specifying responsibilities of certain professional personnel relating to rulemaking; providing for funding certain salary schedules; specifying certain consequences and sanctions and providing exceptions; providing short title designation; requiring maintenance of uniform job classification system; establishing job classification committee and specifying organization, powers and duties; assigning certain other powers and duties relating to job classification; establishing compensation planning and review committee and specifying organization, powers and duties; providing for establishment of market salary structures and minimum salary schedules; requiring periodic updates and specifying certain other related powers and duties; providing for periodic market salary studies and specifying application of study findings; requiring certain salary comparisons and

establishing limit on variations of average salaries among employee classes; specifying authority and duty of Higher Education Policy Commission and Council for Community and Technical College Education over classification and compensation system; requiring promulgation of certain personnel rules by certain date; authorizing emergency rules with prior approval; establishing parameters for rules; specifying mechanisms for correcting identified deficiencies and requiring and authorizing certain sanctions in certain instances; providing for hearing employee appeals; requiring performance evaluations for certain employees; requiring certain training for supervisory personnel; establishing terms and conditions for exercising certain operational flexibilities for governing boards; establishing goals for implementing certain statutes and rules; fixing certain implementation responsibilities; providing for review and approval of governing boards' requests for tuition and fee increases greater than set amounts; removing caps on increases in tuition and fees; clarifying procedure for rental, lease and sale of property; making technical corrections; and deleting obsolete language.

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

That §18-13-1 of the Code of West Virginia, 1931, as amended, be repealed; that §18-23-4a of said code be repealed; that §18B-8-3a of said code be repealed; that §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code be repealed; that §12-1-12d of said code be amended and reenacted; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-4 and §18B-1B-5 of said code be amended and reenacted; that §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code be amended and reenacted; that §18B-2B-3 of said code be amended and reenacted; that §18B-3-1, §18B-3-3 and §18B-3-4 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-4-2a; that §18B-5-9 of said code be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code be amended and

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

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

**ARTICLE 1. STATE DEPOSITORIES.**

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

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

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

(c) Moneys of a university that may be invested with its foundation

pursuant to this section are those subject to the administrative control of the university that are collected under an act of the Legislature for specific purposes and do not include any funds made available to the university from the state General Revenue Fund or the funds established in sections eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

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

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

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

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

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing

board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

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

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

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

~~(h)~~ (g) The amendments to this section in the second extraordinary session of the Legislature in 2010 shall apply retroactively so that the authority granted by this section shall be construed as if that authority

did not expire on July 1, 2010.

**CHAPTER 18B. HIGHER EDUCATION.**

**ARTICLE 1. GOVERNANCE.**

**§18B-1-2. Definitions.**

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

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

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

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

"Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain



education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;

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

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

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

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

"Community and technical college", in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia

Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg;

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

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

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

"Dual credit course" or "dual enrollment course" means a credit-bearing college-level course offered in a high school by a state institution of

higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

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

"Free-standing community and technical colleges" means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

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

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

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

"Independent community and technical college" means a state institution of higher education under the jurisdiction of the council which is independently accredited or seeking independent accreditation, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education.

This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg; and

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

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

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

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

"Sponsoring institution" means a state institution of higher education that maintained an administrative link to a community and technical college

providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus or a division delivering community and technical college education and programs;

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

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

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

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

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

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

**§18B-1-6. Rulemaking.**

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

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

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

(1) "Rule" means any regulation, guideline, directive, standard,

statement of policy or interpretation of general application which has institution-wide effect or which affects the rights, privileges or interests of employees, students or citizens. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application that meets this definition is a rule for the purposes of this section.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals, and objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. ~~of Marshall University and West Virginia University, respectively.~~ To that end, the commission has the following powers and duties relating to the institutions governing boards under its jurisdiction:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting ~~goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals, and objectives~~ and

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

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

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

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

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

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

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

~~(C) Select a minimum of three projects from the list submitted by the council to be included on the ranked list established by the commission. At least one of the three projects selected must come from the top two priorities established by the council;~~

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

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

(13) Ensure that governing boards manage capital projects and

facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter.

~~(13)~~ (14) Acquire legal services as are considered necessary, including representation of the commission, its institutions, governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

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

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

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

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



section one-a, article one and article one-d of this chapter;

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

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

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

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

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

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

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

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

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

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

requirements to repeat courses or to incur additional costs as is are consistent with sound academic policy;

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

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

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

the established education goals, and objectives and priorities pursuant to section one-a, article one and article one-d of this chapter;

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

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

(30) The commission ~~has the authority to~~ may assess institutions under its jurisdiction, including the ~~state institutions of higher education~~

~~known as~~ Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

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

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

(33) Pursuant to ~~the provisions of~~ article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this

chapter. The commission and the council shall promulgate a uniform joint legislative rule for the ~~purpose~~ purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter;

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

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

(36) By November 1, 2011, ~~promulgate a joint rule with the council pursuant to section one, article ten of this chapter,~~ establishing tuition and fee policy for all ~~institutions of higher education~~ governing boards under the jurisdiction of the commission, ~~other than including state institutions of higher education known as Marshall University and West Virginia University. which are subject to the provisions of section one, article ten of this chapter.~~ The rule shall include, but is not limited to, the following:

- (A) Comparisons with peer institutions;
- (B) Differences among institutional missions;
- (C) Strategies for promoting student access;
- (D) Consideration of charges to out-of-state students; and

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

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

(38) Notwithstanding any other provision of this code to the contrary ~~sell, lease, convey or otherwise dispose of all or part of any real property which it may own~~ that it owns, either by contract or at public auction, and to retain the proceeds of any such sale or lease: *Provided, That* *Provided, That*: in accordance with article nineteen of this chapter.

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

~~(i) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section~~

~~two, article three, chapter fifty-nine of this code;~~

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

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

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

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

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

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

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

(4) Academic program review and approval for institutions governing boards under its jurisdiction. including The review and approval includes



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

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

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

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

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

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

(8) ~~Development, establishment and implementation of~~ Developing, establishing and implementing information, assessment, and accountability and personnel systems, including ~~maintenance of~~ maintaining statewide data

systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

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

(10) ~~Development, implementation and oversight of~~ Developing, implementing and overseeing statewide and ~~region-wide~~ regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based ~~funding~~ funds from any source; and

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

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

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

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

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties ~~as may be~~ assigned to it by law, the commission has ~~such other~~ powers and duties ~~as may be~~ necessary or expedient to accomplish the purposes of this article.

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

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

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

state law; or

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

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

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

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

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

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

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

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

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

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

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

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

(f) The commission may employ a Vice Chancellor for Health Sciences who serves at the will and pleasure of the commission. The Vice Chancellor for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine and also shall provide assistance to the

governing boards on matters related to medical education and health sciences. The Vice Chancellor for Health Sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of Vice Chancellor of Health Sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

(2) Appropriate coordination of missions and programs.

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

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

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

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

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

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

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

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

Each governing board separately has the following powers and duties:

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

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

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

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

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

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

(C) ~~Document~~ Documentation the ~~involvement of~~ showing how the governing

board involved the commission or council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

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

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

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

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

institutional compact;

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

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

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

state institution of higher education for credit with the grade earned;

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

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

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

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

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

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

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

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

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

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

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

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

~~(s)~~ (t) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its master plan and ~~institutional~~ compact. If a governing board elects to delegate any of its power and control under ~~the provisions of~~ this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part; except that the commission may not revoke delegations of authority made by the governing boards board of Marshall University or West Virginia University. ~~as they relate to the state institutions of higher education known as Marshall University and West Virginia University;~~

~~(t)~~ (u) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for ~~acceptance of~~ accepting advanced placement credit for the institution under its jurisdiction. Individual departments at a state institution of higher education, with ~~may,~~ ~~upon~~ approval of the institutional faculty senate, may require higher scores on the advanced placement test than



scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

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

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

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

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

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

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

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

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

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

(a) The governing board of a state institution of higher education is granted the additional powers and assigned the associated duties and authorities pursuant to this section previously granted and assigned to the state institutions of higher education known as the governing boards of Marshall University and West Virginia University, subject to the following:  
if

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

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

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

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

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

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

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

~~(5) Sections three and six, article one of this chapter;~~

~~(6) Section two, article one-a of this chapter;~~

~~(7) Section four, article one-b of this chapter;~~

~~(8) Sections three and four of this article;~~

~~(9) (2) Sections Section two and ~~three~~, article three of this chapter;~~

~~(10) (3) Sections five, ~~five-a~~, six and seven, article four of this chapter;~~

~~(11) (4) Sections three, four, Section seven and ~~nine~~, article five of this chapter; and~~

~~(12) (5) Sections one and Section six-a, article ten of this chapter.~~

~~(c) This section does not apply to any community and technical college.~~

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

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

(2) Based upon the findings of the study, the commission and council

shall approve the governing boards under their respective jurisdictions that they determine have the capacity to exercise the powers and carry out the assigned duties pursuant to section four, article five of this chapter; and

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

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

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

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

(a) There is continued the West Virginia council for community and technical college education. The council has all the powers and duties assigned by law to the joint commission for vocational--technical-occupational education prior to the ~~effective date of this section~~ July 1,

2001, and such all other powers and duties as may be assigned by law.

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

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

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

~~(B) After reviewing the evaluation, the council shall make a determination by vote of its members on continuing employment and compensation level for the chancellor.~~

~~(C) After the initial contract period,~~ (c) The council shall conduct

written performance evaluations of the chancellor annually and may offer the chancellor a contract of longer term, but not to exceed three years. At the end of each contract period, the council shall review the evaluations and make a determination by vote of its members on continuing employment and level of compensation.

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

~~(2)~~ (e) The ~~chancellor~~ individual who was serving as Vice Chancellor for Community and Technical College Education and Workforce Development and who became chancellor effective March 13, 2004, maintains all benefits of employment held, accrued and afforded as the Vice Chancellor for Community and Technical College Education and Workforce Development prior to March 13, 2004, ~~Such~~ These benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, any insurance coverage and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this

code, the chancellor is not a new employee and the prohibition on conversion does not apply if the chancellor was eligible for leave conversion while serving as vice chancellor. ~~on the day preceding the effective date of this section. On the effective date of this section for the purpose of section thirteen, article sixteen, chapter five of this code, the chancellor:~~

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

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

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

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

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

(b) The Legislature further finds that these two institutions must compete in both a national and global environment that is rapidly changing, while they continue to provide high quality education that is both



affordable and accessible and remain accountable to the people of West Virginia for the most efficient and effective use of scarce resources.

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

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

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

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

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

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

citizens; and

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

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

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

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

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

~~(B) The administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology; and~~

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

~~(f) (e) The governing boards of Marshall University and West Virginia University each have the power and the obligation to perform functions, tasks and duties as prescribed by law and to exercise their authority and carry out their responsibilities in a manner that is consistent with and~~

not in conflict with the powers and duties assigned by law to the West Virginia council for ~~Community and Technical College Education~~ and the ~~Higher Education Policy~~ commission.

~~(g)~~ (f) While the governing boards of ~~Marshall University and West Virginia University, respectively,~~ may choose to delegate powers and duties to the their respective presidents of the state institutions of higher education known as ~~Marshall University and West Virginia University~~ pursuant to subsection (s), section four, article two-a of this chapter, ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West Virginia for meeting the established state goals, objectives and priorities set forth in this article, and in section one-a, article one and article one-d of this chapter. Therefore, it is the intent of the Legislature that grants of operational flexibility and autonomy be are made directly to the governing boards and are not grants of operational flexibility and autonomy to the presidents president of these institutions an institution.

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

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

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

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

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

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

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

~~(B)~~ (C) Collecting and analyzing data, researching, developing recommendations, and advising the Legislature and the Governor on broad policy initiatives, use of incentive funding, national and regional trends in higher education and issues of resource allocation involving multiple governing boards.

(b) *Relationship between the council and the governing boards.* -- (1)  
The council maintains all powers and duties assigned to it by law or ~~policy rule~~ relating to the ~~institution known as Marshall Community and Technical College, the administration known as The Community and Technical College at West Virginia University Institute of Technology and the institution known as West Virginia University at Parkersburg~~ community and technical colleges as defined in section two, article one of this chapter;

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

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

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

~~(a)~~ The expertise of faculty and graduate students at the state institutions of higher education ~~known as Marshall University and West Virginia University~~ is important to every citizen of this state. It is the responsibility of the governing boards to channel this expertise into research and analysis that will yield measurable benefits to the citizens of West Virginia. Therefore, in addition to the goals, ~~for post-secondary education~~ objectives and priorities established in section one-a, article one and article one-d of this chapter and goals established elsewhere in

this code, it is the responsibility of the governing boards in collaboration to concentrate attention and resources on certain specific state priorities that have a direct, positive impact on the economic, social and cultural well-being of the people of West Virginia. These ~~priorities include, but are not limited to, the following:~~

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

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

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

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

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

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

section.

(c) Additional priorities for governing boards:

(e) (d) In addition to the priorities established in subsection (a) of this section, each governing board under the jurisdiction of the commission separately shall focus resources and attention on improving their its graduation rates rate for full-time undergraduate students as a specific institutional priority. The graduation rate is measured as a percentage of the number of undergraduate students who obtain a degree within six years of the date of enrollment as full-time freshmen. ~~The governing boards shall develop and implement plans to reach the following goals:~~

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

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

(2) By July 1, 2015, the governing board of each state institution of higher education under the jurisdiction of the commission, including the governing boards of Marshall University and West Virginia University, shall attain a graduation rate for full-time undergraduate students that equals or exceeds the graduation rate of its peers established pursuant to section

three, article one-a of this chapter.

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

#### **ARTICLE 4. GENERAL ADMINISTRATION.**

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

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

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

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

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

(4) The commission is responsible to the council and the Chancellor for Community and Technical College Education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and



facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the Vice Chancellor for Administration.

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

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

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

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

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

(a) By and with the advice and consent of the council for community and

technical college education, the commission shall employ a Vice Chancellor for Human Resources who may not be dismissed without the consent of the council. The person employed as senior director of human resources by the commission on January 1, 2011, becomes the Vice Chancellor for Human Resources on the effective date of this section. Thereafter, any vacancy occurring in this position shall be filled in accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The governing boards of ~~Marshall University and West Virginia University~~ each shall ensure the fiscal integrity of its their operations

using best business and management practices.

(1) The practices include at least the following:

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

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

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

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

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

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

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

twelve of this code.

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

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

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

(d) Notwithstanding ~~the provisions of section ten-a, article three, chapter twelve of this code, and except as otherwise provided in this subsection,~~ the amount of any purchase made with any other provision of this code to the contrary, a purchasing card may be used by the council, the commission or ~~any other~~ a governing board of a state institution of

~~higher education may not exceed five thousand dollars to make any payment authorized by the Auditor, including regular routine payments and travel and emergency payments. Payments are set at an amount to be determined by the Auditor.~~

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

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

(3) The ~~commission, council, and governing boards~~ state institutions known as Marshall University and West Virginia University each shall maintain one purchasing card for use only in a situation declared an emergency by the ~~appropriate chancellor or the institution's president.~~ appropriate chancellor or the institution's president. The ~~Council, Commission and all other institutions shall maintain one purchase~~



~~card for use only in a situation declared an emergency by the president of the institution and approved by the appropriate chancellor.~~ Emergencies may include, but are not limited to, partial or total destruction of a campus facility; loss of a critical component of utility infrastructure; heating, ventilation or air condition failure in an essential academic building; loss of campus road, parking lot or campus entrance; or a local, regional, or national emergency situation that has a direct impact on the campus.

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

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

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

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

- (1) Payroll operations;
- (2) Human resources operations;
- (3) Warehousing operations;
- (4) Financial transactions;
- (5) Student financial aid application, processing and disbursement;
- (6) Standard and bulk purchasing; and

(7) Any other operation or service appropriate for consolidation as determined by the council or commission.

(h) ~~An institution~~ A governing board may charge a fee to the governing board of each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing ~~institution~~ the service. ~~as approved by the council and commission.~~

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

(j) Each ~~institution~~ governing board shall strive to minimize its number of low-enrollment sections of introductory courses. To the maximum extent practicable, ~~institutions~~ governing boards shall use distance

learning to consolidate the course sections. ~~Marshall University, West Virginia University,~~ The council and commission shall report the progress of reductions as requested by the Legislative Oversight Commission on Education Accountability.

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 7. PERSONNEL GENERALLY.**

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

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

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

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

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

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

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

(6) Providing for institutional flexibility with meaningful accountability;

(7) Adhering to federal and state laws;

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

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

(b) To accomplish these goals, the Legislature encourages organizations

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

**§18B-7-2. Definitions.**

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

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

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

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

(d) "Employee classification" or "employee class" means those employees designated as classified employees; nonclassified employees, including

presidents, chief executives and top level administrators and faculty as these terms are defined in this article and articles eight, nine and nine-a of this chapter.

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

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

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

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

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

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

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

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

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

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

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



(c) Each employee laid off during a furlough or reduction in workforce is placed upon a preferred recall list and is recalled to employment by the organization on the basis of seniority.

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

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

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

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

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

(2) A position opening may not be filled by the organization, whether

temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

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

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

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

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

(f) In addition to any other information required, applications for employment by personnel governed by this section shall include each

applicant's social security number.

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

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

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

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

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

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

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

**§18B-7-5. Supplemental and additional retirement plans for employees;**

**payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.**

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

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

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

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

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

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

(g) Any person whose employment commences on or after July 1, 1991, and who is eligible to participate in the Higher Education Retirement Plan, shall participate in that plan and is not eligible to participate in any other state retirement system: *Provided*, That the foregoing provision does not apply to a person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code. The

additional retirement plan contracted for by the governing boards prior to July 1, 1991, remains in effect unless changed by the commission. Nothing in this section considers employees of the council or governing boards as employees of the commission, nor is the commission responsible or liable for retirement benefits contracted by, or on behalf of, the council or governing boards.

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

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

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

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

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

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

**§18B-7-7. Employment practices.**

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

(b) Each governing board, with the advice and assistance of the staff councils and other groups representing classified employees, shall promulgate and adopt a rule in accordance with section six, article one of this chapter that discourages temporary, nonemergency, institutionally-imposed changes in an employee's work schedule; that maintains reasonable

continuity in working schedules and conditions for employees; and that requires institutions to consider feasible and innovative ways to use the institution's classified employees most efficiently. These innovations may include, but are not limited to, flexibility in employee scheduling, job-sharing and four-day work weeks.

**§18B-7-8. Reporting.**

(a) *Implementation reports.* --

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

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

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

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



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

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

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

and

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

(b) *Annual personnel reports.* --

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

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

(B) Detailed data disaggregated by organization and employee category

or classification, comparing funding for salaries of faculty, classified employees and nonclassified employees as a percentage of the average funding for each of these classes or categories of employees among the organization's peers, in the state, region or national markets, as appropriate, and among similar organizations within the state systems of public higher education.

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

(A) Human resources department metrics by organization:

(i) Number of human resources staff;

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

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

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

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

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

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

(B) Human resources expense data:

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

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

(iii) Total human resources expense per organization employee.

(C) Compensation data:

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

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

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

(D) System metrics:

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

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

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

(F) Other measures the commission or council considers appropriate to assist policymakers in evaluating the degree of success in implementing

best human resources practices by higher education organizations.

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

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

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

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

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

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

(1) The commission and council shall use the most recent data available and, as appropriate, shall benchmark it against national and regional

markets or peer data; and

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

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

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

(b) Following completion of the initial human resources review, the commission and council jointly shall conduct a systematic human resources

review of each organization at least once within each five-year period.

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

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

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

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

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

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

(3) The employee has not accrued compensatory time in excess of the

prescribed limits.

(b) An employee may accrue up to four hundred eighty hours of compensatory time if the employee's work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work may accrue up to two hundred forty hours of compensatory time. An employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall be paid overtime compensation for additional hours of work. If compensation is paid to an employee for accrued compensatory time, the compensation shall be paid at the regular rate earned by the employee at the time the employee received the payment.

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

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

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

(d) An employee who has accrued compensatory time as authorized by this section, and who has requested the use of compensatory time, shall be permitted by the employer to use this time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operation of the employing agency. Compensatory time must be

used within one year from the time it is accrued.

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

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

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

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

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

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



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

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

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

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

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

(e) No nonclassified employee shall have his or her current annual salary reduced if his or her position is redefined as a classified position

solely to meet the requirements of this section. If such a nonclassified employee is reclassified, his or her salary shall not constitute evidence of inequitable compensation in comparison to other employees in the same paygrade.

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

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

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

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

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

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

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

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

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

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

care for the family member and if the employee has exhausted all sick and annual leave and other paid time off.

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

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

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

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

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

(e) Sick or annual leave may be donated to an employee experiencing a catastrophic illness or injury. The leave shall be donated at the request of the employee after appropriate verification that the employee is unable

to work due to the catastrophic illness or injury as determined by the president of the institution or the appropriate chancellor. When transfer of sick or annual leave is approved by the president of the institution or the appropriate chancellor, any employee may donate sick or annual leave in one-day increments by providing written notice to the personnel office. Donations shall be reflected as a day-for-day deduction from the sick or annual leave balance of the donating employee. An employee receiving the donated sick or annual leave shall have any time which is donated credited to his or her account in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee.

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

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

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

(g) Donated sick or annual leave deposited in an institutional leave bank or transferred under subsection (d) of this section may be inter-institutional in accordance with the policies of the appropriate governing board. Each institution, the commission or the council is responsible for

the administration of the sick or annual leave deposits, withdrawals and transfers of its employees. Rules implementing the provisions of this section may be adopted jointly or separately by the governing boards, the commission or the council in accordance with section six, article one of this chapter and, in the case of the commission and council, in accordance with article three-a, chapter twenty-nine-a of this code.

**§18B-7-15. Merit increases.**

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

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

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

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

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

(3) Collecting and analyzing data and developing recommendations on the advantages and disadvantages of outsourcing certain functions at the

organization level. The data shall include, but are not limited to, the following items:

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

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

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

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

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

**ARTICLE 8. HIGHER EDUCATION FACULTY.**

**§18B-8-1. Definitions.**

As used in this article:

(a) "Academic rank", "rank" or "faculty rank" means the position held by a faculty member as determined by the president, consistent with a rule

promulgated and adopted by the governing board, and includes the positions of professor, associate professor, assistant professor and instructor. All other ranks are excluded from the provisions of this article.

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

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

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

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

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

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

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



(2) Faculty are recognized for outstanding performance;

(3) Equity among salaries is maintained; and

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

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

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

A governing board may grant sabbatical leave to a faculty member at the state institution of higher education under its jurisdiction for the purpose of permitting him or her to engage in graduate study, research or other activities calculated to improve teaching ability. A governing board may grant a request for sabbatical leave only in accordance with the uniform rule it has promulgated and adopted. A governing board may not adopt a rule which provides for granting sabbatical leave to a faculty member who has served fewer than six years at the institution where presently employed, nor which provides for leave for more than one half the contract period at full pay or for a full contract period at half pay. A faculty member receiving a sabbatical leave is required to return and serve the institution granting the leave for at least one year or to repay to the institution the compensation received during leave. A faculty member returning from leave shall be reinstated at the academic rank held immediately prior to taking sabbatical leave unless he or she is promoted to a higher rank and is entitled to the salary and any salary increases

appropriate to his or her rank and years of experience. The compensation for a faculty member on sabbatical leave is paid by the institution where employed from its regular personal services appropriations.

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

(a) Notwithstanding any provision of law to the contrary, a tenured professional at a state institution of higher education who is absent from duties at the institution to accept employment in a nonelected governmental capacity is afforded the benefits of academic tenure, rank and position as if he or she had remained continuously in the position retained and held at the institution immediately preceding the absence if the following conditions are met:

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

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

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

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

**§18B-8-5. Notice to probationary faculty members of retention or**

**nonretention; hearing.**

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

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

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

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

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

(a) Defining an appropriate balance between full-time and adjunct

faculty members and the appropriate role of adjunct faculty; and

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

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

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

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

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

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

**§18B-9-2. Definitions.**

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

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

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

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

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

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

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

(g) "Schedule" or "salary schedule" means the grid of annual salary

figures established in section three of this article; and

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

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

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

and article nine-a, despite any differences in salaries that may occur, a classified employee is equitably compensated in relation to other classified employees in the same pay grade if the following conditions exist:

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

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

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

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

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

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

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

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

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

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

(ii) For governing boards under the jurisdiction of the council, appropriate progress means an organization has funded at least twenty-five



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

**TEMPORARY HIGHER EDUCATION CLASSIFIED EMPLOYEE**

**ANNUAL SALARY SCHEDULE**

**YEARS OF EXPERIENCE**

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

<b>PAY GRADE</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>
1	15,541	15,876	16,226	16,575	16,939	17,304	17,682
2	16,386	16,750	17,129	17,507	17,886	18,294	18,687
3	17,304	17,697	18,090	18,498	18,920	19,343	19,780
4	18,279	18,702	19,139	19,576	20,027	20,493	20,959
5	19,343	19,794	20,260	20,741	21,222	21,717	22,227
6	20,479	20,974	21,469	21,994	22,518	23,057	23,596
7	21,717	22,241	22,780	23,334	23,902	24,484	25,081
8	23,042	23,610	24,193	24,805	25,416	26,043	26,684
9	24,484	25,096	25,737	26,378	27,048	27,732	28,417

10	25,008	25,638	26,295	26,980	27,666	28,379	29,106
11	26,617	27,316	28,015	28,757	29,498	30,267	31,064
12	28,365	29,120	29,890	30,687	31,498	32,323	33,176
13	30,267	31,078	31,918	32,771	33,652	34,561	35,484
14	32,323	33,204	34,114	35,051	36,002	36,981	38,002
15	34,561	35,512	36,505	37,512	38,547	39,624	40,715
16	36,981	38,030	39,093	40,198	41,331	42,492	43,694
17	39,624	40,757	41,918	43,121	44,352	45,611	46,925
18	42,506	43,736	44,995	46,296	47,639	49,023	50,450
19	48,801	50,238	51,719	53,230	54,801	56,416	58,062
20	52,452	54,023	55,623	57,284	58,990	60,755	62,550
21	56,431	58,137	59,902	61,712	63,568	65,482	67,472
22	60,785	62,640	64,555	66,530	68,579	70,674	72,828
23	65,527	67,562	69,656	71,826	74,040	76,344	78,708
24	70,734	72,948	75,237	77,601	80,039	82,552	85,156
25	76,419	78,842	81,356	83,944	86,607	89,360	92,202

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

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

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

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

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

(2) The governing board has promulgated and adopted a salary rule in

accordance with section six, article one of this chapter and the rules of the commission and council establishing a procedure to ensure that salary increases above the temporary salary schedule are distributed equitably and in a manner that is consistent with the uniform classification and compensation system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§18B-9A-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§18B-9A-3. Applicability.**

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

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

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

(b) Until the commission or council, as appropriate, has certified that an organization has achieved full funding of the temporary classified employee annual salary schedule or is making appropriate progress toward attaining full funding as defined by section three, article nine of this

chapter, the organization is subject to article nine of this chapter and may not exercise flexibility provisions in any area of human resources identified in this chapter or in commission and council rule.

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

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

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

(1) The rule shall contain the following provisions related to the job classification committee:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

classification of positions within the job worth hierarchy.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Overseeing the annual internal market review;

(4) Meeting at least annually with the Job Classification Committee to discuss benchmark jobs to be included in salary surveys, market "hot jobs" that may require a temporary salary adjustment, results of job family reviews, and assessment of current job titles within the classification

system for market matches and other issues as the Vice Chancellor for Human Resources, in consultation with the chancellors, determines to be appropriate; and

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

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

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

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

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

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

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

activities:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The salary of an employee working fewer than thirty-seven and

one-half hours per week shall be prorated.

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

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

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

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

By November 1, 2011, the commission and council shall propose a joint rule or rules for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and articles seven, eight and nine of this chapter. The rule shall establish a classification and compensation system that incorporates best human resources practices and takes into consideration the recommendations of the Legislative Select Committee on Higher Education Personnel. At a



minimum, the system rule shall address the areas of organization accountability, employee classification and compensation, performance evaluation and development of organization rules.

(1) *Organization accountability.* --

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

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

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

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

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

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

(iv) If the governing boards fail to correct the major deficiency or

fails to notify the commission or council, as appropriate, that the deficiency has been corrected within a period of four months from the time the governing board receives notification, the commission or council shall apply sanctions as specified:

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

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

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

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

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

(B) Achieving and maintaining appropriate levels of employee dispersion

across steps;

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

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

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

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

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

was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade;

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

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

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

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

(c) *Emergency rule.* --

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

articles seven, eight and nine of this chapter.

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

(d) *Organization rules.* --

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

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

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

provisions.

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

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

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

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

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

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

(6) Notwithstanding any provision of this code to the contrary, each chancellor, or his or her designee, has the authority and the duty to review each classification and compensation rule promulgated by an organization under his or her jurisdiction and to recommend changes to the

rule to bring it into compliance with state and federal law, commission and council rules or legislative, commission and council intent. Each chancellor may reject or disapprove any rule, in whole or in part, if he or she determines that it is not in compliance with law or rule or if it is inconsistent with legislative, commission and council intent.

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

(a) Sweeping cultural changes are needed to implement the recommendations of the Select Committee on Higher Education Personnel and the provisions of this article and articles seven, eight and nine of this code. These kinds of changes require dedication and cooperation from all employee classes across the two systems of public higher education, the commission, council and state policymakers. The primary responsibility for implementation, however, rests with the commission and the council who shall provide leadership and assistance to the human resources professionals within each organization to bring about the changes successfully.

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

(1) Communicating with organization employees and administrators to acquaint them with the guiding principles of the classification and compensation system. The principles which undergird the policy changes are

designed to promote fairness, accountability, credibility, transparency and a systematic approach to progress (FACTS for Higher Education). The discussion shall explain the origin of changes in law and policy and show how these are the result of four years of study culminating in the findings and recommendations contained in the *Final Report to the Select Committee on Higher Education Personnel* (January 11, 2010).

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

(3) Conducting a review of the human resources function at each organization pursuant to section nine, article seven of this chapter to identify best practices and areas of deficiency.

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

(5) Preparing a request for a proposal (RFP) for a human resources



information system capable of meeting a wide range of data requirements to support personnel and policy initiatives.

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

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

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

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

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

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

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

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, ~~an institution~~ a governing board may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a ~~student's~~ students' attorney to perform legal services for students in civil matters at the institutions. ~~Provided, That~~ The legal services are limited ~~only~~ to those types of cases, programs or services approved by the ~~administrative head~~ president of the institution where the legal services are to be performed.

(d) By October 1, 2011, the commission and council ~~jointly~~ each shall propose a rule for legislative approval in accordance with ~~the provisions~~

of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.

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

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

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

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

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

(1) The governing boards shall permit fee payments to be made in

installments over the course of the academic term. All fees shall be paid prior to the awarding of course credit at the end of the academic term.

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

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

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

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

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee

in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

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

(1) ~~Provide~~ Providing a basis for establishing nonresident tuition and fees;

(2) ~~Allow institutions~~ Allowing governing boards to charge different tuition and fees for different programs;

(3) ~~Provide that a board of Governors may~~ Authorizing a governing board to propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be

reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission or council or both, as appropriate, shall certify to the Legislature annually by October 1 the amount of fees collected for each of the five years;

(4) ~~Establish~~ Establishing methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for ~~community and technical college~~ students in all ~~independently accredited~~ community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any ~~institution~~ governing board based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The ~~institutions~~ governing boards shall report annually to the commission or council on the numbers of nonresidents and ~~such~~ any other enrollment information as the commission or council may request.

(k) Tuition and fee increases of the governing boards, ~~except for~~ including the governing boards of the ~~state institutions of higher~~

~~education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate, shall examine individually each request from a governing board for an increase and make its determinations as follows:~~

~~(1) Subject to the provisions of subdivisions (4) and (8) of this subsection, a governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established specialized fee which may be proposed by a governing board.~~

~~\_\_\_\_(2) A governing board under the jurisdiction of the council may propose tuition and fee increases of up to four and three-quarters percent for undergraduate resident students for any fiscal year, except a governing board may propose increases in excess of four and three-quarters percent if existing tuition and fee rates at the institution are below the state average for tuition and fees at institutions under the jurisdiction of the council. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established, specialized fee which may be proposed by a governing board.~~

~~(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.~~

~~(4) Subject to the provisions of subdivision (8) of this subsection, the governing boards of Marshall University and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:~~

~~(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the commission; and~~

~~(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.~~

~~(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology, the regional campus known as West Virginia University at Parkersburg and, until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology.~~

~~(5)(1) Any proposed A tuition and fee increase greater than three percent for resident students proposed by a governing board for state~~



~~institutions of higher education other than the state institutions of higher education known as~~ except the governing boards of Marshall University, West Virginia School of Osteopathic Medicine and West Virginia University, requires the approval of the commission or council, as appropriate.

(2) A tuition and fee increase greater than five percent for resident students proposed by the governing boards of Marshall University, West Virginia School of Osteopathic Medicine and West Virginia University requires the approval of the commission.

(3) In determining whether to approve or deny the a governing board's request for a tuition and/or fee increase for resident students greater than the increases granted pursuant to subdivisions (1) and (2) of this subsection, the commission or council shall determine the progress the institution governing board has made toward meeting the conditions outlined in this ~~subdivision~~ subsection and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution governing board has met the following conditions:

(A) ~~Has Maximized~~ Maximizes resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) ~~Is Consistently achieving~~ achieves the benchmarks established in the compact ~~of the institution pursuant to the provisions of article one-a one-d~~ of this chapter;

(C) ~~Is~~ Continuously ~~pursuing~~ pursues the statewide goals for post-secondary education and the statewide compact established in articles ~~one and one-a~~ of this chapter;

(D) ~~Has demonstrated~~ Demonstrates to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) ~~Has demonstrated~~ Demonstrates to the satisfaction of the commission or council that the institution governing board is making adequate progress toward achieving the goals for education established by the southern regional education board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nation-wide inflationary benchmarks;

~~(F) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.~~

~~(6) (4) This section does not require equal increases among institutions governing boards or nor does it require any level of increase at an institution by a governing board.~~

~~(7) (5) The commission and council shall report to the Legislative~~

Oversight Commission on Education Accountability regarding the basis for approving or denying each approval or denial request as determined using the criteria established in subdivision (5) of this subsection.

~~(8) Notwithstanding the provisions of subdivisions (1) and (4) of this subsection, tuition and fee increases at state institutions of higher education which are under the jurisdiction of the commission, including the state institutions of higher education known as Marshall University and West Virginia University, are subject to the following conditions:~~

~~(A) Institutions may increase tuition and fees for resident, undergraduate students by no more than an average of seven and one-half percent per year during any period covering four consecutive fiscal years, with the first fiscal year of the first four fiscal-year cycle beginning on July 1, 2007;~~

~~(B) The seven and one-half percent average cap does not apply to an institution for any fiscal year in which the total state base operating budget appropriations to that institution are less than the total state base operating budget appropriations in the fiscal year immediately preceding;~~

~~(C) A new capital fee or an increase in an existing capital fee is excluded from the tuition and fee increase calculation in this subdivision:~~

~~(i) If the new fee or fee increase is approved by an institutional governing board or by a referendum of an institution's undergraduate students, or both, on or before February 1, 2006; or~~

~~(ii) If the following conditions are met:~~

~~(I) The new fee or fee increase was approved by an institutional governing board or by a referendum of an institution's undergraduate students, or both, on or before July 1, 2006;~~

~~(II) The institution for which the capital fee is approved has been designated a university pursuant to the provisions of section six, article two-a of this chapter by the effective date of this section; and~~

~~(III) The institutional board of Governors previously oversaw a community and technical college that achieved independent accreditation and consequently acquired its own board of Governors;~~

~~(D) Institutions shall provide, in a timely manner, any data on tuition and fee increases requested by the staff of the commission. The commission shall: (i) collect the data from any institution under its jurisdiction; and (ii) Annually by July 1, provide a detailed analysis of the institutions' compliance with the provisions of this subdivision to the Legislative Oversight Commission on Education Accountability.~~

## **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

### **§18B-19-10. Authorization to sell property; use of proceeds.**

(a) Notwithstanding any other provision of law or this code to the contrary, the commission, council and governing boards each may sell, lease, convey or otherwise dispose of all or part of any real property that it owns, either by contract or at public auction, and retain the proceeds of the transaction.

(1) The commission, council and governing boards may not sell, ~~lease,~~ convey or otherwise dispose of any real property without first performing the following steps:

(A) Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

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

(C) Holding a public hearing on the issue in the county in which the real property is located; and

(D) In the case of the commission, notifying the Joint Committee on Government and Finance.

~~(2) Any proceeds from the sale, lease, conveyance or other disposal of real property that is used jointly by institutions or for statewide programs under the jurisdiction of the commission or the council shall be transferred to the General Revenue Fund of the state.~~

~~(b) (2)~~ The commission, council or a governing board shall deposit the net proceeds from the sale ~~lease, conveyance or other disposal~~ of real property into a special revenue account in the State Treasury to be appropriated by the Legislature in the annual budget bill for the purchase of additional real property, equipment or technology, or for capital improvements or maintenance at the institution that sold the surplus real

property.

(b) Notwithstanding any other provision of law or this code to the contrary, for purposes that further the state goals, objectives and priorities for higher education set out in this code, the commission, council and each governing board may lease, as lessor, any real property that it owns, either by contract or at public auction, and retain the proceeds of the lease.

(c) Notwithstanding any other provision of law or this code to the contrary, the commission, council and each governing board may convey, transfer or exchange any real property it owns to any other public body.

NOTE: The purpose of this bill is to create "FACTS for Higher Education" by establishing fair, accountable, credible, transparent, and systematic mechanisms to determine classification status and compensation for classified employees in public higher education organizations. It repeals certain provisions relating to higher education personnel generally, moves several current provisions to new locations, and rewrites three existing articles. The bill sets forth certain specific powers, duties, and limitations of the Higher Education Policy Commission, the Council for Community and Technical College Education, and each state institution of higher education relating to personnel. It makes legislative findings, defines terms, provides for promulgation of rules, requires regular reviews of human resources functions, and describes and establishes dates for periodic reports to the Legislature. The bill sets percentage limits for certain types of employees; establishes implementation and effective dates, requires review and approval of certain budget and rule-making functions; provides terms and conditions for certain employment practices; requires salary comparisons among classes of employees and certain of their peers; and authorizes and requires certain employee benefits and rights. The bill removes codified salary caps for classified employees under specific circumstances, provides for establishing market salary structures and a minimum salary schedule, requires periodic market salary studies, and specifies uses for study findings. The bill requires employee performance evaluations and training for supervisory personnel who administer evaluations, sets limits for exercising certain operational flexibilities, establishes implementation goals for certain statutes and rules, and assigns certain implementation responsibilities. The bill also establishes graduation rates that certain governing boards must meet, repeals sunset provision for pilot investment program for Marshall

University and West Virginia University; extending their authority to increase certain types of investment with approval of the Policy Commission; and clarifies authority of the Policy Commission, the Council, and governing boards regarding leasing, renting, and selling property.

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

§18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12; §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6; and §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 have been completely rewritten; §18B-4-2a; §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; and §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8 are new; therefore, strike-throughs and underscoring have been omitted.