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WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

SB 444



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 444

(SENATORS PLYMALE, JENKINS AND BEACH,
ORIGINAL SPONSORS)

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE
FOR
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(SENATORS PLYMALE, JENKINS AND BEACH,
original sponsors)

[Passed April 13, 2013; in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; and that §18B-7-11 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.

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

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

14 (c) Moneys of a university that may be invested with its
15 foundation pursuant to this section are those subject to the
16 administrative control of the university that are collected
17 under an act of the Legislature for specific purposes and do
18 not include any funds made available to the university from
19 the State General Revenue Fund or the funds established in
20 sections eighteen or eighteen-a, article twenty-two, chapter

21 twenty-nine of this code. Moneys permitted to be invested
22 under this section may be aggregated in an investment fund
23 for investment purposes.

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

28 (1) \$18 million for Marshall University and \$25 million
29 for West Virginia University; or

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

33 (3) Notwithstanding subdivisions (1) and (2) of this
34 subsection, with the approval of the Higher Education Policy
35 Commission, Marshall University may increase the amount
36 invested to \$60 million and West Virginia University may
37 increase the amount invested to \$70 million.

38 (e) Investments by foundations that are authorized under
39 this section shall be made in accordance with and subject to
40 the provisions of the Uniform Prudent Investor Act codified
41 as article six-c, chapter forty-four of this code. As part of its
42 fiduciary responsibilities, each governing board shall
43 establish investment policies in accordance with the Uniform
44 Prudent Investor Act for those moneys invested with its
45 foundation. The governing board shall review, establish and
46 modify, if necessary, the investment objectives as
47 incorporated in its investment policies so as to provide for
48 the financial security of the moneys invested with its
49 foundation. The governing boards shall give consideration
50 to the following:

51 (1) Preservation of capital;

52 (2) Diversification;

53 (3) Risk tolerance;

54 (4) Rate of return;

55 (5) Stability;

56 (6) Turnover;

57 (7) Liquidity; and

58 (8) Reasonable cost of fees.

59 (f) A governing board shall report annually by December
60 31 to the Governor and to the Joint Committee on
61 Government and Finance on the performance of investments
62 managed by its foundation pursuant to this section.

63 (g) The amendments to this section in the second
64 extraordinary session of the Legislature in 2010 apply
65 retroactively so that the authority granted by this section shall
66 be construed as if that authority did not expire on July 1,
67 2010.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

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

1 **(a) Findings. –**

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

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

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

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

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

16 **(b) Boards of governors established. –**

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

29 Technical College, the West Virginia School of Osteopathic
30 Medicine, West Virginia State University, West Virginia
31 University and West Virginia University at Parkersburg.

32 (c) *Board membership.* –

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

37 (2) The Board of Governors for Marshall University
38 consists of sixteen persons. The Board of Governors for
39 West Virginia University consists of seventeen persons. The
40 boards of governors of the other state institutions of higher
41 education consist of twelve persons.

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

44 (A) A full-time member of the faculty with the rank of
45 instructor or above duly elected by the faculty of the
46 respective institution;

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

50 (C) A member from the institutional classified employees
51 duly elected by the classified employees of the respective
52 institution;

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

56 (5) For the Board of Governors at West Virginia
57 University, twelve lay members appointed by the Governor,
58 by and with the advice and consent of the Senate, pursuant to
59 this section, and additionally:

60 (A) The Chairperson of the Board of Visitors of West
61 Virginia University Institute of Technology;

62 (B) A full-time faculty member representing the
63 extension service at the institution or a full-time faculty
64 member representing the health sciences, selected by the
65 faculty senate.

66 (6) For each board of governors of the other state
67 institutions of higher education, nine lay members appointed
68 by the Governor, by and with the advice and consent of the
69 Senate, pursuant to this section.

70 (A) Of the nine members appointed by the Governor, no
71 more than five may be of the same political party. Of the
72 thirteen members appointed by the Governor to the
73 governing board of Marshall University, no more than eight
74 may be of the same political party. Of the twelve members
75 appointed by the Governor to the governing board of West
76 Virginia University, no more than seven may be of the same
77 political party.

78 (B) Of the nine members appointed by the Governor, at
79 least five shall be residents of the state. Of the thirteen
80 members appointed by the Governor to the governing board
81 of Marshall University, at least eight shall be residents of the
82 state. Of the twelve members appointed by the Governor to
83 the governing board of West Virginia University, at least
84 seven shall be residents of the state.

85 (7) In making lay appointments, the Governor shall
86 consider the institutional mission and membership
87 characteristics including the following:

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

90 (B) The need for awareness and understanding of
91 institutional problems and priorities, including those related
92 to research, teaching and outreach;

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

94 (D) The value of achieving balance in gender and
95 diversity in the racial and ethnic characteristics of the lay
96 membership of each board.

97 (d) *Board member terms.* –

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

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

104 (3) The member representing classified employees serves
105 for a term of two years. Each term begins on July 1.
106 Members representing classified employees are eligible to
107 succeed themselves for three additional terms, not to exceed
108 a total of eight consecutive years.

109 (4) The appointed lay citizen members serve terms of
110 four years each and are eligible to succeed themselves for no

111 more than one additional term, except that citizen members
112 who are appointed to fill unexpired terms are eligible to
113 succeed themselves for two full terms after completing an
114 unexpired term.

115 (5) A vacancy in an unexpired term of a member shall be
116 filled for the unexpired term within thirty days of the
117 occurrence of the vacancy in the same manner as the original
118 appointment or election. Except in the case of a vacancy, all
119 elections are held and all appointments are made no later
120 than June 30 preceding the commencement of the term.
121 Each board of governors shall elect one of its appointed lay
122 members to be chairperson in June of each year. A member
123 may not serve as chairperson for more than four consecutive
124 years.

125 (6) The appointed members of the boards of governors
126 serve staggered terms of up to four years except that four of
127 the initial appointments to the governing boards of
128 community and technical colleges that became independent
129 July 1, 2008, are for terms of two years and five of the initial
130 appointments are for terms of four years.

131 (e) *Board member eligibility, expenses.* –

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

135 (A) For a baccalaureate institution or university, a person
136 is ineligible for appointment who is an officer, employee or
137 member of any other board of governors; an employee of any
138 institution of higher education; an officer or member of any
139 political party executive committee; the holder of any other
140 public office or public employment under the government of

141 this state or any of its political subdivisions; an employee of
142 any affiliated research corporation created pursuant to article
143 twelve of this chapter; an employee of any affiliated
144 foundation organized and operated in support of one or more
145 state institutions of higher education; or a member of the
146 council or commission. This subsection does not prevent the
147 representative from the faculty, classified employees,
148 students or the superintendent of a county board of education
149 from being members of the governing boards.

150 (B) For a community and technical college, a person is
151 ineligible for appointment who is an officer, employee or
152 member of any other board of governors; a member of a
153 board of visitors of any public institution of higher education;
154 an employee of any institution of higher education; an officer
155 or member of any political party executive committee; the
156 holder of any other public office, other than an elected
157 county office, or public employment, other than employment
158 by the county board of education, under the government of
159 this state or any of its political subdivisions; an employee of
160 any affiliated research corporation created pursuant to article
161 twelve of this chapter; an employee of any affiliated
162 foundation organized and operated in support of one or more
163 state institutions of higher education; or a member of the
164 council or commission. This subsection does not prevent the
165 representative from the faculty, classified employees or
166 students from being members of the governing boards.

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

173 (3) A member of a governing board appointed by the
174 Governor may not be removed from office by the Governor
175 except for official misconduct, incompetence, neglect of duty
176 or gross immorality and then only in the manner prescribed
177 by law for the removal of the state elective officers by the
178 Governor.

179 (4) The members of the board of governors serve without
180 compensation, but are reimbursed for all reasonable and
181 necessary expenses actually incurred in the performance of
182 official duties under this article upon presentation of an
183 itemized sworn statement of expenses.

184 (5) The president of the institution shall make available
185 resources of the institution for conducting the business of its
186 board of governors. All expenses incurred by the board of
187 governors and the institution under this section are paid from
188 funds allocated to the institution for that purpose.

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

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

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

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

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

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

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

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

ARTICLE 7. PERSONNEL GENERALLY.

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

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

10 A higher education organization which has more than
11 twenty percent of its employees placed in the nonclassified
12 category as defined by this subsection on July 1, 2011, shall
13 reduce the number of nonclassified employees to no more
14 than twenty-five percent by July 1, 2013, and to no more than
15 twenty percent by July 1, 2015, except as set forth in
16 subsections (b) and (c) of this section.

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

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

27 (2) Athletic coaches are excluded from calculation of the
28 ratio. The commission and the council shall include

29 consideration of this employee category in each review
30 required by section nine of this article and shall monitor
31 organizations' use of this category and include this
32 information in the reports required by subsections (a) and (b),
33 section eight of this article.

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

38 (1) The governing board of an institution votes to
39 approve any percentage or fraction of a percentage number
40 above twenty percent and seeks and receives the approval of
41 the commission or council, as appropriate, before increasing
42 the total above twenty percent.

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

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

50 (2) *Powers and duties of commission and council*
51 *regarding nonclassified staff ratios. –*

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

57 (B) The commission and council shall provide technical
58 assistance to organizations under their respective
59 jurisdictions in collecting and interpreting data to ensure that
60 they fulfill the requirements established by this section.
61 Consideration of these issues shall be made part of each
62 review required by section nine of this article and
63 information from the review included in the reports required
64 by subsections (a) and (b), section eight of this article;

65 (C) The chancellors shall monitor the progress of the
66 organizations in meeting the deadlines established in this
67 section and shall report periodically to the council and
68 commission. The commission and council shall make a
69 preliminary compliance report to the Legislative Oversight
70 Commission on Education Accountability by September 1,
71 2013, and a final report on organization compliance to that
72 body by September 1, 2015.

73 (D) Subject to a joint recommendation by the
74 commission and the council and subsequent affirmative
75 action by the Legislature to extend the authority beyond the
76 specified date of termination, the authority of an organization
77 to place more than twenty percent of its personnel in the
78 nonclassified category pursuant to this section expires on
79 July 1, 2016.

80 (d) The current annual salary of a nonclassified employee
81 may not be reduced if his or her position is redefined as a
82 classified position solely to meet the requirements of this section.
83 If such a nonclassified employee is reclassified, his or her salary
84 does not constitute evidence of inequitable compensation in
85 comparison to other employees in the same paygrade.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rocky Ferguson
.....
member ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph M. Minard
.....
Clerk of the Senate

Bryce W. Day
.....
Clerk of the House of Delegates

Jeffrey K. ...
.....
President of the Senate

...
.....
Speaker of the House of Delegates

2013 MAY -1 PM 6:03
SECRETARY OF STATE

FILED

The within *is approved* this the *1st*
Day of *May*, 2013.

Carl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm