WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 444

(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.

(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. The 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 $60 million and West Virginia University may increase the amount invested to $70 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 amendments to this section in the second extraordinary session of the Legislature in 2010 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 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

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

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

1. The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;

2. The technical or professional expertise and institutional experience of a classified employee of the institution governed by the board;

3. An awareness and understanding of the issues facing the institution governed by the board; and

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

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

A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty University, West Virginia Northern Community and
29 Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University, West Virginia University and West Virginia University at Parkersburg.

32 (c) Board membership. –

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

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

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

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

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

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

53 (4) For the Board of Governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;
(5) For the Board of Governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and additionally:

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

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

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

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

(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least seven shall be residents of the state.
(7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:

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

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

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

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

(d) Board member terms.

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

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

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

(4) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no
more than one additional term, except that citizen members who are appointed to fill unexpired terms are eligible to succeed themselves for two full terms after completing an unexpired term.

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

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

(e) Board member eligibility, expenses. –

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

(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of
this state or any of its political subdivisions; an employee of
any affiliated research corporation created pursuant to article
twelve of this chapter; an employee of any affiliated
foundation organized and operated in support of one or more
state institutions of higher education; or a member of the
council or commission. This subsection does not prevent the
representative from the faculty, classified employees,
students or the superintendent of a county board of education
from being members of the governing boards.

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

(2) Before exercising any authority or performing any
duties as a member of a governing board, each member shall
qualify as such by taking and subscribing to the oath of office
prescribed by section five, article IV of the Constitution of
West Virginia and the certificate thereof shall be filed with
the Secretary of State.
(3) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

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

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

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

(a) The governing boards are subject to the supervision of the commission or the council, as appropriate, except in those instances where specific statutory exceptions are granted by law to the governing boards of 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, 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.

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

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

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

(3) All data accessed or received from an institution shall be treated in a manner consistent with the privacy protections 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.

(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.

A higher education organization which has more than twenty percent of its employees placed in the nonclassified category as defined by this subsection 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, except as set forth in subsections (b) and (c) of this section.

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

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

(2) 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.

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

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

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

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

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

(A) It is the duty of the commission and council jointly to establish criteria for the purpose of making decisions on approving or disapproving requests by organizations to exceed the twenty percent limit for personnel placed in the nonclassified category;
(B) The commission and council shall provide technical assistance to organizations under their respective jurisdictions in collecting and interpreting data to ensure that they fulfill the requirements established by this section. Consideration of these issues shall be made part of each review required by section nine of this article and information from the review included in the reports required by subsections (a) and (b), section eight of this article;

(C) The chancellors shall monitor the progress of the organizations in meeting the deadlines established in this section and shall report periodically to the council and commission. 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.

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

(d) The current annual salary of a nonclassified employee may not be 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 does not constitute evidence of inequitable compensation in comparison to other employees in the same paygrade.

(e) For the purposes of this section only the commission and council are not considered higher education organizations.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Robby Thompson  
Member - Chairman Senate Committee

Danny Wells  
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph M. Mimms  
Clerk of the Senate

Gregg E. Davis  
Clerk of the House of Delegates

S. C. Owens  
President of the Senate

K. E. L. Miller  
Speaker of the House of Delegates

The within ... approved ... this the 1st...

Day of ........................................, 2013.

Earl Ray Tomblin  
Governor
PRESENTED TO THE GOVERNOR

MAY - 1  2013

Time 1:55 pm