

Key Provisions of HB 2542 and Their Impact

Effective 90 days from Passage (3/14/17)

- Repeals WV Code 18B-7-9 that required human resources reviews of institutions by HEPC and CTC.
- Repeals WV Code 18B-7-11 that sets present limitations on number and type of nonclassified employees
- Repeals WV Code 18B-7-12 that requires employee to agree to additional duties not in job description
- Repeals WV Code 18B-9-1 that sets out legislative intent for a complete and uniform system of class and comp
- Repeals WV Code 18B-9-2 that sets out present definitions for personnel matters
- Repeals WV Code 18B-9-3 that sets out existing classified salary schedule and definition of “full funding”. Also removes protection language for institutions that deems employees equitably compensated in comparison to others as long as they are paid within their paygrade
- Repeals WV Code 18B-9-4 that allows governing boards to pay persons in excess of the years of service and paygrade of their position
- Repeals WV Code 18B-9A-3 that provided institutions certain flexibilities if they reached full funding of the classified salary schedule
- Repeals WV Code 18B-9A-8 which set the goals and requirements for a higher ed classification and compensation system
- WV Code 18B-1B-5. Removes language that Chancellor of HEPC may employ a Vice-Chancellor for Human Resources and other HR positions. Does not mean that Chancellor cannot exercise inherent powers to retain or employ persons in those positions. Chancellor to consult with institutions on human relations policies and rules.
- WV Code 18B-4-2a. Removes requirement that a Vice-Chancellor for Human Resources and other HR positions be employed. Chancellor designated to Chair the Classified Committee and Compensation Planning and Review Committee. However, there are two Chancellors in higher education and the code section as amended does not state which chancellor is to serve as chair. Removes requirement the HR personnel at institutions must be regularly evaluated
 - By deleting responsibilities of the Vice Chancellor for HR , the bill also removed certain oversight requirements. Removed responsibility for HEPC Division of HR to:
 - Develop and implement business related initiatives involving organizational design, labor cost management, executive recruitment and compensation, leadership and management development, HR data and technology, and compensation and benefits programs;
 - Responsibility for coordinating classification and compensation programs for classified employees, including designing these programs and for supporting each higher education organization in implementing the programs; (However

- designing and implementing same for nonclassified and faculty upon request from a BOG remains).
- Maintaining consistent HR information systems;
 - Removed responsibility for providing regular review of jobs and proper classification of jobs;
 - Removed requirement to review every job once every 5 years; and
Removed requirement to conduct market comparison studies for classified employees.
- WV Code 18B-7-1. Removes provision that a portion of future tuition increases go toward meeting salary goals for all classes of employee. Intent of Legislature will now be that institutions achieve full funding of new levels of classified pay set out in other sections. Removes goal of human resources be systematic
 - WV Code 18B-7-2. Seniority is defined for layoffs (if used as a criteria) as only years at that institution.
 - WV Code 18B-7-3. Reductions in force to occur based on institutional adopted rules. Criteria for reductions in force to be determined by institution. No reason has to be established or given for layoffs. Seniority is only one of many factors BOG can consider, or not consider at all, in regards to allowing bumping by laid off employees. An organization may offer laid off employees severance packages of up to one year's salary but it is not required. Required rule only requires 30 days' notice to affected staff and consultation with staff council. BOG need not agree with staff council desires. All recall rights were deleted from statute. Preference for minimally qualified internal candidates for vacancies removed
 - WV Code 18B-7-6. Any authority of HEPC and CTC to promulgate legislative rules governing continuing education and professional development is deleted and any such rule would be adopted by each BOG.
 - WV Code 18B-7-8. Has HEPC and CTC report to LOCEA every five years starting in 2020 on a list of personnel and HR measures that have been pared down from present requirements.
 - WV Code 18B-8-7. Allows BOGs after 30 days and consulting with faculty senate to adopt a rule regarding faculty. The BOG rule would preempt any conflicting rule of the HEPC and CTC.
 - WV Code 18B-9A-2. "Classified employee" is a person deemed non-exempt under the duties test of the FLSA. Anyone a classified employee on January 1, 2017 remains a classified employee unless the institution deems them non-classified because:
 - They hold a direct policymaking position;
 - Report directly to the president;
 - Is hired after July 1, 2017 and meets the duties test of the FLSA for exempt employees;
 - Is in an "information technology- related position", or
 - No definition of "information technology related"
 - Is in a position deemed critical by the institution.

- This effectively means that an institution can make all non-faculty positions non-classified. This section also states that all nonclassified employees are will and pleasure. According to court decision, will and pleasure employees can be terminated for any reason or no reason at all unless it is contrary to public policy.
- This can also affect the institutional classified employee council at each institution established by WV Code 18B-6-6. That code section requires that two classified employees be elected each odd-numbered year in five different categories:
 - Administrative/managerial
 - Professional/nonteaching
 - Paraprofessional
 - Secretarial/ clerical
 - Physical plant/maintenance
 - Many institutions will not have any classified employees in some of these areas or maybe not at all
- The same issue affects the provisions setting out an elected member of the classified staff as sitting on each BOG. There may be no classified employees left or institutions can reclassify classified reps as nonclassified to make them ineligible.
- There is no limit on the number of nonclassified employees an institution may have
- An issue at each institution is whether all nonclassified employees will receive 2 days of annual leave each month per HEPC and CTC rules or whether BOGs will change that at their institution
- The statute does not automatically make employees nonclassified unless the institution wants to do so
- WV Code 18B-9A-5. Removes authority of Compensation Planning and Review Committee to conduct five year market study with external vendor. Has the “Chancellor or chancellor’s designee, in consultation with the chancellors” meet annually with Job Classification Committee. Does not indicate which Chancellor shall consult with the chancellors.
- WV Code 18B-9A-6. HEPC and CTC to develop and maintain a classified salary schedule. Sets out criteria. Eliminates requirement to hire external vendor to conduct market salary study. Requires HEPC and CTC to use Workforce West Virginia and other compensation data such as CUPA to establish appropriate external market conditions for classified positions.
 - HEPC and CTC to approve a minimum salary schedule each year at which no one can be paid below. This is subject to available funds. It is not stated who will determine if there are available funds.
- WV Code 18B-9A-7. Retains authority of HEPC and CTC to establish and administer a class and comp system. Removes sanction of prohibiting new hires till institutional deficiencies are cured. Each institution shall adopt their own class and comp rules

and the section giving authority to Chancellor's to approve or disapprove those rules is removed. However another section is retained that states that these rules "Receives approval for the classification and compensation rule from the appropriate chancellor". This implies that institutional rules in this area have to be approved by Chancellor.

- WV Code 18B-9B-1. Institutions may file rules to implement personnel articles seven and eight of Chapter 18B and rules by the HEPC and CTC implementing those articles would be preempted by the institutional rules. BOG must only consult with staff council before implementing these rules and faculty are not mentioned.
 - Each institution may establish a class and comp rule of their own after consultation with staff council and notice to the HEPC or CTC.
 - Provisions of WV Code 9A and the rules promulgated thereto by the HEPC or CTC are inapplicable to the extent it conflicts with the institutional rule regarding 9A. However, the mandate in 18B-9A-7 that requires the chancellor to approve a class and comp rule is not set out in rule but in statute as set out above. Thus it is arguable whether an institution can promulgate an effective rule in this area without a Chancellor's approval. It is a given that a rule that has not been approved as required by statute might not be effective
 - This section does not address the authority of the HEPC or CTC set out in their powers and duties sections to "promulgate rules necessary or expedient to fulfill the purposes of this chapter [18B]" or to "Determine when a joint rule is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule..." Any rules promulgated under these sections need not be promulgated pursuant to articles 7, 8, 9 and 9A and thus it might be problematic whether HEPC and CTC rules promulgated under this authority can be preempted.
 - The institutional class and comp rules must address:
 - Opportunities for advancement
 - Factors used to classify jobs
 - Objective standards for job descriptions.
 - Implementing performance evaluations
 - Quarterly meetings with staff council
 - May address differential pay
 - External review of HR every five years