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Senate Bill 330 Myths v. Facts

Background:

[Senate Bill \(SB\) 330, "FACTs for Higher Education,"](#) was passed by the West Virginia Legislature in early 2011, signed into law by the Governor and made effective in June 2011. The law relates to human resources practices and functions at all state institutions of higher education. By its own terms, SB 330 requires "(s)weeping cultural changes" to public higher education human resources functions (West Virginia Code §18B-9A-8). The language of the law suggests two primary objectives: first, to foster a human resources environment at each school that promotes the core values of fairness, accountability, credibility, transparency and a systematic approach to progress; and second, to achieve certain goals with respect to the classification and compensation system affecting higher education employees. Another goal is to update the classified salary schedule that has not been modified since 2001.

Myth: Faculty were included in SB 330 as a late addition and were not notified that the law would be applicable to them.

Fact: The provisions in SB 330 affecting faculty were included in the bill at the time it was first introduced during the 2011 Legislative session and appeared almost identically in a predecessor bill from the 2010 session.

In 2010, the Legislature debated and passed [SB 480](#), which was ultimately not signed into law because of technical problems. The provisions of SB 330 that now affect faculty are essentially unchanged from those appearing in the earlier SB 480. Specifically, the definitions section of SB 480 identifies faculty as one of the "employee classifications" within the higher education system; requires comparisons of faculty and other classification salaries with those in appropriate markets; and appoints faculty members to a new compensation planning committee created by the bill. These same elements reappeared the very next year in SB 330, which became law in June 2011. Importantly, the internal pay equity concept of "relative market equity" was first included in 2010's SB 480 word-for-word as it now appears in SB 330.

The following is a summary of information shared with and available to system institutions (presidents, constituent group chairs, legislative liaisons and others) during earlier legislative action and debates surrounding both SB 480 and SB 330 that included information as it applies to faculty.



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- **2005 Regular Legislative Session:** The Legislature passed [SB 603](#), requiring the Higher Education Policy Commission (Commission), in consultation with the Council for Community and Technical College Education (Council), governing boards, the State Advisory Council of Faculty and the State Advisory Council of Classified Employees to conduct a study relating to issues affecting employees in public higher education. As such, faculty were involved in a three-year long personnel study leading up to SB 480.
- **2010 Regular Legislative Session:** Bruce Walker, Commission and Council General Counsel, provided recurring legislative updates to institutions that included bill summaries for all higher education-specific bills, including SB 480. In addition, Commission staff developed and distributed to institutional legislative liaisons a "Capitol Watch" update containing an overview of higher education-related actions.
- **2011 Regular Legislative Session:** Bruce Walker provided recurring legislative updates to institutions that included bill summaries for all higher education-specific bills, including SB 330.
- In addition, information regarding legislation under consideration was made available on a Legislative Tracking page on the Commission's website, as well as the Legislature's website (www.legis.state.wv.us), which provides daily summaries of bills introduced, advancing and passed – along with live streaming audio of floor sessions and committee meetings.

Myth: SB 330 transfers management of all human resources functions from the institutions to the Higher Education Policy Commission and the newly-created position of Vice Chancellor for Human Resources.

Fact: As outlined in SB 330, the human resources function has always been vested with the Legislature and the law does not remove from the institutions any previously-existing authority or governance over system employees.

SB 330 created a new position of Vice Chancellor for Human Resources (West Virginia Code §18B-4-2a). Statute does not give this position direct management or authority over any institution or particular human resources function (other than the supervision of Commission human resources employees); rather, it sets forth that the position is one that "monitors," "supports," "maintains," "analyzes" and "coordinates."

The direct management authority granted to the Commission under SB 330 is limited to the requirement that it "...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." (West Virginia Code §18B-9-1). A uniform system of personnel classification and compensation has existed in West Virginia higher education since the creation of the current classification system in 1992.



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While SB 330 does vest with the Commission authority over the classification and compensation **system** for classified employees, the law correspondingly affords individual institutions substantially greater flexibility with respect to classified employee pay practices than has previously existed. Subject only to a new, minimum classified salary schedule to be set by the Commission, individual institutions will finally have the flexibility to see their classified salary schedules adjusted for geographic differences in the cost of labor around the state; be permitted to adjust all employee classification salary levels to align with an institutionally-determined compensation philosophy; and, consider relevant recruitment and retention criteria for classified employees institutions have never before been allowed to consider.

As opposed to withdrawing or restricting any existing institutional human resources authority, SB 330 in fact affords greater flexibility in many human resources practices to individual institutions.

Myth: Four different people have held the position of Vice Chancellor for Human Resources since the passage of the law in early 2011.

Fact: There have been two people in the position of Vice Chancellor for Human Resources, including the current Vice Chancellor, since the law was enacted.

Myth: The law requires three years of data collection following receipt of the market salary survey currently being conducted by an outside consultant "...before **creating a plan to achieve (the compensation concept of) relative market equity.**" As a result, the Commission is moving to implement that concept too quickly without a sufficient amount of data required by the law.

Fact: As opposed to requiring a three year collection of data before **creating a plan to achieve relative market equity**, the law requires that each institution instead maintain a 5% differential between employee classification compensation **for a period of three consecutive years** before it will be deemed to have achieved relative market equity.

The Legislative Oversight Commission on Educational Accountability (LOCEA) recently passed a resolution calling for the Commission and the Council "...to move with all deliberate speed towards achieving all aspects of SB 330, specifically the compensation goals, including a new classified salary structure and relative market equity."

The creation of a plan to achieve relative market equity must precede implementation. A draft legislative rule to create such a plan is being developed by an ad hoc committee created by the Vice Chancellor for Human Resources and consisting of representatives from all affected employee classifications (faculty, classified and non-classified staff).



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In its current format, the proposed legislative rule affords each institution a period of no fewer than three years **to begin making progress** towards achieving the 5% differential between employee classification salaries (the draft rule also allows for extensions beyond that three-year period in the event an institution determines it will be unable to fully close the gap within the first three years). According to the law, that 5% differential—once achieved—must be maintained for a period of three consecutive years in order to satisfy relative market equity.

Myth: SB 330 revises and restricts the definition of non-classified employees, "...remov(ing) this authority from the president and prevent(ing) the president from addressing critical recruitment issues." This "restricts institutional flexibility" and will significantly hamper efforts to recruit and to retain positions such as professional technologists.

Fact: SB 330 does change the definition of who can be deemed a non-classified employee to prevent any further dilution of the 20-year-old employee classification system that has become too flexible to be effective and fair. In exchange for altering that non-classified definition, however, SB 330 also greatly modifies the relevant salary-setting criteria and provides for previously unavailable enhancements to classified salary rates so as to create market-competitive retention and recruitment tools for classified staff positions.

One of the "sweeping cultural changes" created by SB 330 is the elimination of the strict years-of-service salary grid system for classified positions that was first designed in 1992 and has not been updated since 2001. In its place, SB 330 includes two much more modern and practical solutions to the problem of a strict classification system that is insufficiently flexible and responsive to meet the ever-changing demands of the modern job market.

Before SB 330, institution presidents had no means of recruiting, retaining and rewarding classified employees because their hands were tied by a rigid salary schedule that permitted consideration of State of West Virginia employment service as the exclusive criteria for setting and moving classified employees through the salary grid. In other words, a plumber who had worked for the WV Department of Transportation for 15 years could be hired into a higher education institution at the maximum rate, while a plumber with 15 years of private industry experience could only be offered the entry-level rate; under the current schedule, there is nearly a 50% difference between these two salaries. The ever-evolving market forces that affect competition for many traditional classified positions were not considered under the existing classified salary system and, in response, the definition of non-classified was expanded to allow transfers into that class—and, thereby, greater flexibility—to provide market-competitive salaries for these positions.

The first of SB 330's innovations to address the non-classified definition "creep" is the move to considerations such as classified staff job performance and "other objective, measureable factors including education, years of experience in higher education (outside of West Virginia public



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higher education) and experience above position requirements.” (West Virginia Code §18B-9A-7(b)(2)(A)). These new criteria will eventually apply to all newly-filled and existing classified positions, finally permitting real institutional flexibility and market-responsiveness while allowing truly classified positions to remain within the original intent of the classification system.

The second of SB 330’s innovations to the classified system is the recognition of a need for quicker and even greater market-responsiveness to be applied to positions or fields deemed to be “hot jobs” or “...jobs for which the application of point factor methodology (the current means of classifying jobs) produces significantly lower salaries than external market pricing.” (West Virginia Code §18B-9A-4(c)(6)). Since the implementation of the original classification system in 1992, certain fields have experienced substantial growth in demand and value in the external labor market (e.g., IT positions, health care jobs, etc.) without any commensurate change in the classification values assigned to these positions. The state’s 20 institutions have, therefore, experienced recent and ongoing recruitment and turnover problems in these fields because of the rigidity of the classification system, another factor leading to expansion in the application of the non-classified definition at institutions facing the toughest outside competition for qualified people.

While the SB 330 redefinition of the non-classified category will limit institutions’ abilities to re-label these positions as non-classified as they have done in the past, institutions will now be afforded the opportunity to focus and award “base pay enhancements” to positions for which they can demonstrate “hot jobs” status. This additional flexibility in the classification system—combined with the consideration of job-related factors over and above mere years of service in a West Virginia state agency—will allow institutions to pay market-competitive rates for positions in which market rates has increased beyond the static classified salary schedule.

Myth: The market compensation surveys being conducted by the outside consultant will be insufficiently tailored or specific to the particular markets and peers that represent the widely varying higher education institutions and other employers, forming competition for qualified employees in all classifications. Large research institutions like West Virginia University and specialty schools like the West Virginia School of Osteopathic Medicine will be compared with small community and technical colleges.

Fact: SB 330 requires—as does the contract with the consultant performing the market compensation surveys—the gathering of market compensation data for **peer groups by institution** as well as other “relevant external markets.” This means the market compensation surveys will produce data unique to each institution as determined by factors such as Carnegie Classification, geographic differentials in the cost of labor across West Virginia, relevant recruitment markets and other compensation-relevant characteristics. This is not a “one size fits all” approach.



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The outside consultant conducting the surveys was directed early on that the comparison groups for the different classes of employees and different institutions must necessarily consider "relevant external markets" in accordance with the dictates of SB 330. As a general rule, faculty and non-classified positions **at each institution** will be compared with an aggregate and unique grouping of 20 or so peer institutions that share certain characteristics with each institution. Similar recruitment markets, perhaps narrowed from a national scope to a regional scope, will also likely be applied to certain classified positions (registrars, for example) that are particular to higher education or for which the recruitment market includes a wider scope than purely local recruitment markets. Finally, certain classified positions for which employees are typically drawn only from a local market (e.g., food service workers) will be compared with local market salary data.

By tailoring each institution's survey to appropriate recruitment markets by position and then adjusting those results for geographic differentials based on the cost of labor within West Virginia, each institution will receive a uniquely individualized comparison of its own compensation to the most relevant recruitment markets with which it competes for each different class of employees.