

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 408

BY SENATORS TRUMP AND BLAIR

[Originating in the Committee on Government

Organization; reported on March 23, 2017]

1 A BILL to repeal §29-6-1, §29-6-2, §29-6-3, §29-6-4, §29-6-5, §29-6-6, §29-6-7, §29-6-7a, §29-
2 6-8, §29-6-9, §29-6-10, §29-6-10a, §29-6-11, §29-6-12, §29-6-14, §29-6-16, §29-6-17,
3 §29-6-19, §29-6-20, §29-6-21, §29-6-22, §29-6-23, §29-6-24, §29-6-25, §29-6-26, §29-6-
4 27 and §29-6-28 of the Code of West Virginia, 1931, as amended; to amend and reenact
5 §6C-2-2, §6C-2-3 and §6C-2-4 of said code; and to amend said code by adding thereto a
6 new article, designated §6C-5-1, §6C-5-2, §6C-5-3, §6C-5-4, §6C-5-5, §6C-5-6, §6C-5-7,
7 §6C-5-8, §6C-5-9, §6C-5-10, §6C-5-11, §6C-5-12, §6C-5-13 and §6C-5-14, all relating to
8 the personnel management of public employees; eliminating the state civil service system;
9 modifying employees which may file grievances with the West Virginia Public Employees
10 Grievance Board; modifying procedures of the West Virginia Public Employees Grievance
11 Board; establishing the State Personnel Management Act and providing the purpose of
12 the Act; defining terms; providing that all state employees covered under the civil service
13 system shall become at-will employees effective July 1, 2017; providing that employees
14 of the state shall have all the same protections, rights, responsibilities, and remedies
15 provided by federal and state law to private employees; providing that the agencies of the
16 state shall have all rights, responsibilities, and remedies provided by federal and state law
17 to private employers, including the right to terminate an employee at any time for any
18 lawful reason; establishing the State Governmental Employee Advisory Panel; providing
19 for the composition, general operating parameters, and the duties and functions of the
20 State Governmental Employee Advisory Panel; requiring the State Governmental
21 Employee Advisory Panel adopt model policies related to personnel management;
22 providing minimal provisions and policies that model policies shall include; establishing
23 responsibilities and authorities of department secretaries related to personnel policies and
24 management; continuing the Division of Personnel; providing duties, functions and
25 authority of the Division of Personnel; providing for the appointment of a director of the
26 Division of Personnel and establishing required qualifications and compensation;

27 providing for required procedures related to the certification of payrolls; providing a remedy
28 for an employee subjected to the wrongful withholding of certification of a payroll voucher
29 or account; requiring the establishment and maintenance of a leave donation program;
30 prohibiting certain acts related to obtaining or interfering with employment with the state;
31 establishing a misdemeanor criminal offense and providing penalties; authorizing the
32 Governor to furlough certain state employees where there is a fiscal emergency; defining
33 the terms "furlough" and "fiscal emergency"; and providing procedures for the furlough of
34 certain state employees.

Be it enacted by the Legislature of West Virginia:

1 That §29-6-1, §29-6-2, §29-6-3, §29-6-4, §29-6-5, §29-6-6, §29-6-7, §29-6-7a, §29-6-8,
2 §29-6-9, §29-6-10, §29-6-10a, §29-6-11, §29-6-12, §29-6-14, §29-6-16, §29-6-17, §29-6-19, §29-
3 6-20, §29-6-21, §29-6-22, §29-6-23, §29-6-24, §29-6-25, §29-6-26, §29-6-27 and §29-6-28 of the
4 Code of West Virginia, 1931, as amended, be repealed; that §6C-2-2, §6C-2-3 and §6C-2-4 of
5 said code be amended and reenacted; and that said code be amended by adding thereto a new
6 article, designated §6C-5-1, §6C-5-2, §6C-5-3, §6C-5-4, §6C-5-5, §6C-5-6, §6C-5-7, §6C-5-8,
7 §6C-5-9, §6C-5-10, §6C-5-11, §6C-5-12, §6C-5-13 and §6C-5-14, all to read as follows:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-2. Definitions.

1 For the purpose of this article and article three of this chapter:

2 (a) "Board" means the West Virginia Public Employees Grievance Board created in article
3 three of this chapter.

4 (b) "Chief administrator" means, in the appropriate context, ~~the commissioner, chancellor,~~
5 ~~director, president, secretary or head of any state department, board, commission, agency, state~~
6 ~~institution of higher education, commission or council, the state superintendent,~~ the county
7 superintendent, the executive director of a regional educational service agency or the director of
8 a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief

9 administrator" includes a designee, with the authority delegated by the chief administrator,
10 appointed to handle any aspect of the grievance procedure as established by this article.

11 (c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any
12 day in which the employee's workplace is legally closed under the authority of the chief
13 administrator due to weather or other cause provided for by statute, rule, policy or practice.

14 (d) "Discrimination" means any differences in the treatment of similarly situated
15 employees, unless the differences are related to the actual job responsibilities of the employees
16 or are agreed to in writing by the employees.

17 (e) (1) "Employee" means any person hired for permanent employment by an employer
18 for a probationary, full- or part-time position.

19 (2) A substitute education employee is considered an "employee" only on matters related
20 to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy,
21 rule or written agreement relating to the substitute.

22 ~~(3) "Employee" does not mean a member of the West Virginia State Police employed~~
23 ~~pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by~~
24 ~~the Superintendent of the State Police. "Employee" does not mean an employee of a constitutional~~
25 ~~officer unless he or she is covered under the civil service system, an employee of the Legislature~~
26 ~~or a patient or inmate employed by a state institution.~~

27 (3) "Employee" does not mean an employee of:

28 (A) A state department, agency, board, commission, or any allied, advisory, affiliated or
29 related entity of an executive department, including all those listed in section one, article two,
30 chapter five-f of this code;

31 (B) A constitutional officer;

32 (C) The Legislature;

33 (D) The Judiciary;

34 (E) The Department of Education; and

35 (F) The Higher Education Policy Commission, the Council for Community and Technical
36 College Education, and any institution under their supervision;

37 (f) "Employee organization" means an employee advocacy organization with employee
38 members that has filed with the board the name, address, chief officer and membership criteria
39 of the organization.

40 (g) "Employer" means a ~~state agency, department, board, commission, college, university,~~
41 ~~institution, State Board of Education, Department of Education,~~ county board of education,
42 regional educational service agency or multicounty vocational center, or agent thereof, using the
43 services of an employee as defined in this section.

44 (h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential,
45 exceptional or advantageous treatment of a similarly situated employee unless the treatment is
46 related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

47 (i) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or
48 a misinterpretation of the statutes, policies, rules or written agreements applicable to the
49 employee including:

50 (i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms
51 and conditions of employment, employment status or discrimination;

52 (ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices
53 of his or her employer;

54 (iii) Any specifically identified incident of harassment;

55 (iv) Any specifically identified incident of favoritism; or

56 (v) Any action, policy or practice constituting a substantial detriment to or interference with
57 the effective job performance of the employee or the health and safety of the employee.

58 (2) "Grievance" does not mean any pension matter or other issue relating to public
59 employees insurance in accordance with article sixteen, chapter five of this code, retirement or
60 any other matter in which the authority to act is not vested with the employer.

61 (j) "Grievance proceeding", "proceeding" or the plural means a conference, level one
62 hearing, mediation, private mediation, private arbitration or level three hearing, or any
63 combination, unless the context clearly indicates otherwise.

64 (k) "Grievant" means an employee or group of similarly situated employees filing a
65 grievance.

66 (l) "Harassment" means repeated or continual disturbance, irritation or annoyance of an
67 employee that is contrary to the behavior expected by law, policy and profession.

68 (m) "Party", or the plural, means the grievant, intervenor, or employer, ~~and the Director of~~
69 ~~the Division of Personnel or his or her designee, for state government employee grievances. The~~
70 ~~Division of Personnel shall not be a party to grievances involving higher education employees.~~

71 (n) "Representative" means any employee organization, fellow employee, attorney or
72 other person designated by the grievant or intervenor as his or her representative and may not
73 include a supervisor who evaluates the grievant.

74 (o) "Reprisal" means the retaliation of an employer toward a grievant, witness,
75 representative or any other participant in the grievance procedure either for an alleged injury itself
76 or any lawful attempt to redress it.

§6C-2-3. Grievance procedure generally.

1 (a) *Time limits.* --

2 (1) An employee shall file a grievance within the time limits specified in this article.

3 (2) The specified time limits may be extended to a date certain by mutual written
4 agreement and shall be extended whenever a grievant is not working because of accident,
5 sickness, death in the immediate family or other cause for which the grievant has approved leave
6 from employment.

7 (b) *Default.* --

8 (1) The grievant prevails by default if a required response is not made by the employer
9 within the time limits established in this article, unless the employer is prevented from doing so

10 directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay
11 the grievance process.

12 (2) Within ten days of the default, the grievant may file with the chief administrator a written
13 notice of intent to proceed directly to the next level or to enforce the default. If the chief
14 administrator objects to the default, then the chief administrator may, within five days of the filing
15 of the notice of intent, request a hearing before an administrative law judge for the purpose of
16 stating a defense to the default, as permitted by subdivision (1) of this subsection, or showing that
17 the remedy requested by the prevailing grievant is contrary to law or contrary to proper and
18 available remedies. In making a determination regarding the remedy, the administrative law judge
19 shall determine whether the remedy is proper, available and not contrary to law.

20 (3) If the administrative law judge finds that the employer has a defense to the default as
21 permitted by subdivision (1) of this subsection or that the remedy is contrary to law or not proper
22 or available at law, the administrative law judge may deny the default or modify the remedy to be
23 granted to comply with the law or otherwise make the grievant whole.

24 (c) *Defenses and limitations.* —

25 (1) *Untimeliness.* -- Any assertion that the filing of the grievance at level one was untimely
26 shall be made at or before level two.

27 (2) *Back pay.* -- When it is a proper remedy, back pay may only be granted for one year
28 prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence,
29 that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay,
30 in which case an eighteen-month limitation on back pay applies.

31 (3) *Statutory defense.* -- If a party intends to assert the application of any statute, policy,
32 rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded
33 to all parties.

34 (d) *Withdrawal and reinstatement of grievance.* -- An employee may withdraw a grievance
35 at any time by filing a written notice of withdrawal with the chief administrator or the administrative

36 law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted
37 by the chief administrator or the administrative law judge. If more than one employee is named
38 as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee
39 named in the grievance.

40 (e) *Consolidation and groups of similarly situated employees.* --

41 (1) Grievances may be consolidated at any level by agreement of all parties or at the
42 discretion of the chief administrator or administrative law judge.

43 (2) Class actions are not permitted. However, a grievance may be filed by one or more
44 employees on behalf of a group of similarly situated employees. Any similarly situated employee
45 shall complete a grievance form stating his or her intent to join the group of similarly situated
46 employees. Only one employee filing a grievance on behalf of similarly situated employees shall
47 be required to participate in the conference or level one hearing.

48 (f) *Intervention.* -- Upon a timely request, any employee may intervene and become a party
49 to a grievance at any level when the employee demonstrates that the disposition of the action
50 may substantially and adversely affect his or her rights or property and that his or her interest is
51 not adequately represented by the existing parties.

52 (g) *Representation and disciplinary action.* --

53 (1) An employee may designate a representative who may be present at any step of the
54 procedure as well as at any meeting that is held with the employee for the purpose of discussing
55 or considering disciplinary action.

56 (2) An employee may not be compelled to testify against himself or herself in a disciplinary
57 grievance hearing.

58 (h) *Reprisal.* -- No reprisal or retaliation of any kind may be taken by an employer against
59 a grievant or any other participant in a grievance proceeding by reason of his or her participation.
60 Reprisal or retaliation constitutes a grievance and any person held responsible is subject to
61 disciplinary action for insubordination.

62 (i) *Improper classification.* -- A supervisor or administrator responsible for a willful act of
63 bad faith toward an employee or who intentionally works an employee out of classification may
64 be subject to disciplinary action, including demotion or discharge.

65 (j) *Forms.* -- The board shall create the forms for filing grievances, giving notice, taking
66 appeals, making reports and recommendations and all other necessary documents and provide
67 them to chief administrators to make available to any employee upon request.

68 (k) *Discovery.* -- The parties are entitled to copies of all material submitted to the chief
69 administrator or the administrative law judge by any party.

70 (l) *Notice.* -- Reasonable notice of a proceeding shall be sent at least five days prior to the
71 proceeding to all parties and their representatives and shall include the date, time and place of
72 the proceeding. If an employer causes a proceeding to be postponed without adequate notice to
73 employees who are scheduled to appear during their normal work day, the employees may not
74 suffer any loss in pay for work time lost.

75 (m) *Record.* -- Conferences are not required to be recorded, but all documents admitted
76 and the decision, agreement or report become part of the record. All the testimony at a level one
77 and level three hearing shall be recorded by mechanical means and a copy of the recording
78 provided to any party upon request. The board is responsible for paying for and promptly providing
79 a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.

80 (n) *Grievance decisions and reports.* --

81 (1) Any party may propose findings of fact and conclusions of law within twenty days of an
82 arbitration or a level three hearing.

83 (2) A decision, agreement or report shall be dated, in writing, setting forth the reasons for
84 the decision or outcome and transmitted to the parties and, in a private arbitration, to the board,
85 within the time limits prescribed. If the grievance is not resolved, the written decision or report
86 shall include the address and procedure to appeal to the next level.

87 (o) *Scheduling.* -- All proceedings shall be scheduled during regular work hours in a

88 convenient location accessible to all parties in accommodation to the parties' normal operations
89 and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or
90 any place. Disagreements shall be decided by the administrative law judge.

91 (p) *Attendance and preparation.* --

92 (1) The grievant, witnesses and an employee representative shall be granted reasonable
93 and necessary time off during working hours to attend grievance proceedings without loss of pay
94 and without charge to annual or compensatory leave credits.

95 (2) In addition to actual time spent attending grievance proceedings, the grievant and an
96 employee representative shall be granted time off during working hours, not to exceed four hours
97 per grievance, for the preparation of the grievance without loss of pay and without charge to
98 annual or compensatory leave credits. However, the first responsibility of any employee is the
99 work assigned to the employee. An employee may not allow grievance preparation and
100 representation activities to seriously affect the overall productivity of the employee.

101 (3) The grievant and an employee representative shall have access to the employer's
102 equipment for purposes of preparing grievance documents subject to the reasonable rules of the
103 employer governing the use of the equipment for nonwork purposes.

104 (4) Disagreements regarding preparation time shall be decided by the administrative law
105 judge.

106 (q) *Grievance files.* --

107 (1) All grievance forms decisions, agreements and reports shall be kept in a file separate
108 from the personnel file of the employee and may not become a part of the personnel file, but shall
109 remain confidential except by mutual written agreement of the parties.

110 (2) The grievant may file a written request to have the grievant's identity removed from
111 any files kept by the employer one year following the conclusion of the grievance.

112 (r) *Number of grievances.* -- The number of grievances filed against an employer by an
113 employee is not, per se, an indication of the employer's or the employee's job performance.

114 (s) *Procedures and rules.* -- The board shall prescribe rules and procedures in compliance
115 with this article, article three of this chapter and the state Administrative Procedures Act under
116 chapter twenty-nine-a of this code for all proceedings relating to the grievance procedure

117 (t) *Effects of amendments.* -- Any grievance claim filed pursuant to this article that is
118 pending as of July 1, 2017, shall continue to be adjudicated under the provisions of code in effect
119 prior to the enactment of amendments made to this article during the regular session of
120 Legislature, 2017.

§6C-2-4. Grievance procedural levels.

121 (a) *Level one: Chief administrator.* --

122 (1) Within fifteen days following the occurrence of the event upon which the grievance is
123 based, or within fifteen days of the date upon which the event became known to the employee,
124 or within fifteen days of the most recent occurrence of a continuing practice giving rise to a
125 grievance, an employee may file a written grievance with the chief administrator stating the nature
126 of the grievance and the relief requested and request either a conference or a hearing. The
127 employee shall also file a copy of the grievance with the board. ~~State government employees~~
128 ~~shall further file a copy of the grievance with the Director of the Division of Personnel.~~

129 (2) *Conference.* -- The chief administrator shall hold a conference within ten days of
130 receiving the grievance. A conference is a private, informal meeting between the grievant and the
131 chief administrator to discuss the issues raised by the grievance, exchange information and
132 attempt to resolve the grievance. The chief administrator may permit other employees and
133 witnesses to attend and participate in a conference to reach a resolution. The chief administrator
134 shall issue a written decision within fifteen days of the conference.

135 (3) *Level one hearing.* -- The chief administrator shall hold a level one hearing within fifteen
136 days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private
137 in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence
138 and procedure do not apply, but the parties are bound by the rules of privilege recognized by law.

139 The parties may present and cross-examine witnesses and produce documents, but the number
140 of witnesses, motions and other procedural matters may be limited by the chief administrator. The
141 chief administrator shall issue a written decision within fifteen days of the level one hearing.

142 (4) An employee may proceed directly to level three upon the agreement of the parties or
143 when the grievant has been discharged, suspended without pay or demoted or reclassified
144 resulting in a loss of compensation or benefits. Level one and level two proceedings are waived
145 in these matters.

146 (b) *Level two: Alternative dispute resolution.* --

147 (1) Within ten days of receiving an adverse written decision at level one, the grievant shall
148 file a written request for mediation, private mediation or private arbitration.

149 (2) *Mediation.* -- The board shall schedule the mediation between the parties within twenty
150 days of the request. Mediation shall be conducted by an administrative law judge pursuant to
151 standard mediation practices and board procedures at no cost to the parties. Parties may be
152 represented and shall have the authority to resolve the dispute. The report of the mediation shall
153 be documented in writing within fifteen days. Agreements are binding and enforceable in this state
154 by a writ of mandamus.

155 (3) *Private mediation.* -- The parties may agree in writing to retain their choice of a private
156 mediator and share the cost. The mediator shall schedule the mediation within twenty days of the
157 written request and shall follow standard mediation practices and any applicable board
158 procedures. Parties may be represented and shall have the authority to resolve the dispute. The
159 report of the mediation shall be documented in writing within fifteen days. Agreements are binding
160 and enforceable in this state by a writ of mandamus.

161 (4) *Private arbitration.* -- The parties may agree, in writing, to retain their choice of a private
162 arbitrator and share the cost. The arbitrator shall schedule the arbitration within twenty days of
163 the written request and shall follow standard arbitration practices and any applicable board
164 procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of

165 fact and conclusions of law on the issues submitted within thirty days following the arbitration. An
166 arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator
167 shall inform the board, in writing, of the decision within ten days.

168 (c) *Level three hearing.* --

169 (1) Within ten days of receiving a written report stating that level two was unsuccessful,
170 the grievant may file a written appeal with the employer and the board requesting a level three
171 hearing on the grievance. ~~State government employees shall further file a copy of the grievance~~
172 ~~with the Director of the Division of Personnel.~~

173 (2) The administrative law judge shall conduct all proceedings in an impartial manner and
174 shall ensure that all parties are accorded procedural and substantive due process.

175 (3) The administrative law judge shall schedule the level three hearing and any other
176 proceedings or deadlines within a reasonable time in consultation with the parties. The location
177 of the hearing and whether the hearing is to be made public are at the discretion of the
178 administrative law judge.

179 (4) The administrative law judge may issue subpoenas for witnesses, limit witnesses,
180 administer oaths and exercise other powers granted by rule or law.

181 (5) Within thirty days following the hearing or the receipt of the proposed findings of fact
182 and conclusions of law, the administrative law judge shall render a decision in writing to all parties
183 setting forth findings of fact and conclusions of law on the issues submitted.

184 (6) The administrative law judge may make a determination of bad faith and, in extreme
185 instances, allocate the cost of the hearing to the party found to be acting in bad faith. The
186 allocation of costs shall be based on the relative ability of the party to pay the costs.

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ARTICLE 5. STATE PERSONNEL MANAGEMENT ACT.

§6C-5-1. Short title; purpose.

1 (a) This article shall be known and may be cited as the State Personnel Management Act.

2 (b) It is the purpose of this Act to establish in the state a system of personnel management
3 which will:

4 (1) Provide the executive branch of this state with flexibility and freedom in personnel
5 management so as to promote the overall effectiveness and efficiency of state government;

6 (2) Allow each department of state government to operate within a framework of personnel
7 policies and practices that are best suited for that department;

8 (3) Ensure that the state's most valued resource, its employees, are managed in a manner
9 to promote workforce productivity and sound business practices;

10 (4) Allow the state to recruit, hire, advance, promote and terminate employees based on
11 their relative ability, knowledge, and skills, including open consideration of qualified applicants for
12 initial employment;

13 (5) Provide state employees equitable and adequate compensation based on merit,
14 performance, job value, and competitiveness within applicable labor markets; and

15 (6) Treat applicants and employees in all aspects of personnel administration in
16 compliance with all applicable state and federal equal employment opportunity and
17 nondiscrimination laws.

§6C-5-2. Definitions.

1 As used in this article:

2 (a) "Agency" means all separate and distinct divisions of state government whose heads
3 are legally authorized to appoint employees to positions; but does not include the Legislature,
4 Judiciary, State Auditor, State Treasurer, Secretary of State, Commissioner of Agriculture, and
5 Attorney General.

6 (b) "Appointing authority" means the person or groups of persons authorized by law or
7 delegated authority to make appointments to fill positions.

8 (c) "Department" means a department identified in section one, article two, chapter five-f
9 of this code, the Department of Education, the Higher Education Policy Commission and all the

10 institutions under its supervision, and the West Virginia Council for Community and Technical
11 College Education and all the institutions under its supervision.

12 (d) "Director" means the head of the Division of Personnel.

13 (e) "Division" means the Division of Personnel.

14 (f) "Medical emergency" means a medical condition of an employee or a family member
15 of the employee that is likely to require the prolonged absence of the employee from duty and
16 which will result in a substantial loss of income to the employee due to the unavailability of paid
17 leave.

18 (g) "Panel" or "advisory panel" means the State Governmental Employee Advisory Panel.

19 (h) "Position" means a particular job which has set duties and responsibilities assigned or
20 delegated by a competent authority for the performance by one person.

21 (i) "Secretary" means the secretary of a department identified in section one, article two,
22 chapter five-f of this code, the Chancellor of the Higher Education Policy Commission, the
23 Chancellor for Community and Technical College Education, and the Superintendent of Schools.

**§6C-5-3. Transfer of classified service employees to at-will employees; employee
protections, rights, responsibilities, and remedies.**

1 (a) Effective July 1, 2017, all employees of the state covered under the civil service system
2 previously established in this code shall become at-will employees of their respective employers.

3 (b) Employees of the state shall have all the same protections, rights, responsibilities, and
4 remedies provided by federal and state law to private employees.

5 (c) The agencies of the state shall have all rights, responsibilities, and remedies provided
6 by federal and state law to private employers, including the right to terminate an employee at any
7 time for any lawful reason.

§6C-5-4. State Governmental Employee Advisory Panel established; composition.

1 (a) The State Governmental Employee Advisory Panel is hereby established.

2 (b) The Panel shall be composed of the following twelve members, or their designees: the

3 Secretary of the Department of Administration; Secretary of the Department of Commerce;
4 Secretary of the Department of Environmental Protection; Secretary of the Department of
5 Education and the Arts; Secretary of the Department of Health and Human Resources; Secretary
6 of the Department of Military Affairs and Public Safety; Secretary of the Department of Revenue;
7 Secretary of the Department of Transportation; Secretary of the Department of Veterans'
8 Assistance; State Superintendent of Schools; Chancellor of the Higher Education Policy
9 Commission; and Chancellor of the Council for Community and Technical College Education.

10 (c) The Secretary of Administration shall serve as the chair of the Panel.

11 (d) Members of the Panel shall receive no additional compensation for service on the
12 panel.

13 (e) Seven members shall constitute a quorum. Only the votes of a majority of the members
14 present are necessary for the transaction of any business or discharge of any duties of the State
15 Governmental Employee Advisory Panel, if there is a quorum present at the time of the vote.

16 (f) Meetings of the Panel shall be held at the call of the chair or upon the written request
17 of two members, at such time and place as designated in the call or request.

§6C-5-5. Duties and functions of State Governmental Employee Advisory Panel.

1 (a) The State Governmental Employee Advisory Panel shall provide guidance for how the
2 personnel policies of the various departments, as well as the several agencies, divisions and other
3 entities shall be administered.

4 (b) The Panel shall hold regular meetings as needed for the proper discharge of its duties.
5 Notice of meetings shall be released to all departments at least ten days prior to each panel
6 meeting.

7 (c) The Panel shall:

8 (1) Represent the public interests in the improvement of personnel management within all
9 state departments;

10 (2) Determine appropriate human resource management goals and objectives;

11 (3) In coordination with the Division of Personnel, develop and prescribe model policies
12 for state personnel management;

13 (4) Advise and assist the several state departments, divisions, agencies, or other entities
14 on personnel management issues;

15 (5) At a public meeting, adopt model policies that may be adopted by departments and
16 agencies of the state and used in effectuating the state's personnel management system,
17 pursuant to section six of this article, no later than July 1, 2017; and

18 (6) At public meetings, amend or adopt additional model policies that may be adopted by
19 departments and agencies of the state at any time deemed necessary by the Panel.

§6C-5-6. Model policies.

1 (a) Model policies adopted by the panel shall, at a minimum, include:

2 (1) Provisions for the conduction of examinations, applications, appointments, promotions,
3 transfers, demotions, reports of performance, payroll certification, and other phases of personnel
4 administration;

5 (2) Provisions prohibiting discrimination for or against any person or employee in any
6 manner, including, but not be limited to, hiring, discharge, compensation, benefits, terms or
7 conditions of employment, promotion, job classification, transfer, privileges, or demotion, on any
8 basis prohibited by applicable state or federal law;

9 (3) Provisions necessary to conform to the minimum standards for merit systems of
10 personnel administration as specified by those federal departments from which federal funds are
11 obtained for use by the several state departments covered by this article;

12 (4) Provisions defining and prohibiting improper political activity by employees covered
13 under the terms of this article;

14 (5) Provisions for establishing and maintaining a performance management system for the
15 periodic review and rating of the quality and quantity of work performed by employees;

16 (6) Policies for the accrual and usage of leave and holidays and for compensation due to

17 emergency closure of state offices or facilities for non-temporary employees; and

18 (7) Policies allowing leave time for organ donation, which allow a full-time state employee:

19 (A) Up to one hundred twenty hours of leave with pay during each calendar year to use
20 during those hours when the employee is absent from work because of the employee's donation
21 of any portion of an adult liver or because of the employee's donation of an adult kidney;

22 (B) Up to fifty-six hours of leave with pay during each calendar year to use during those
23 hours when the employee is absent from work because of the employee's donation of adult bone
24 marrow; and

25 (C) To be compensated at the employee's regular rate of pay for those regular work hours
26 during which the employee is absent from work.

§6C-5-7. Responsibility of secretaries.

1 (a) The secretary of each department shall:

2 (1) No later than August 1, 2017, adopt as departmental policies the model policies
3 developed by the panel with any modifications the secretary finds necessary or desirable to
4 accommodate the secretary's department: *Provided*, That a secretary may choose not to adopt
5 one or more of the model policies adopted by the panel if, after review of the model policy, he or
6 she determines that adopting the policy would be counter to the purposes of this article;

7 (2) No later than July 1, 2018, adopt uniform policies regarding attendance, work
8 schedules, and utilization of accrued leave;

9 (3) Develop and maintain a common employment application form to be used by all
10 applicants for employment within the department, which form may be supplemented as necessary
11 by agencies within the department and may be individualized based on agency job classes;

12 (4) Develop, validate, or administer applicant screening devices when requested by
13 agencies and when funding for those activities can be accomplished on a cost recovery basis;

14 (5) In consultation with the Division of Personnel and the agencies of the department,
15 establish criteria for the implementation of policies adopted by the secretary which agencies shall

16 use in developing internal processes for compensation, pay for performance, and performance
17 management, including processes involved in defining job classes, establishing and applying
18 associated minimum qualifications, developing and applying applicant screening methods, and
19 measuring worker effectiveness;

20 (6) Audit agencies' processes as referred to in paragraph (3) of this subsection and report
21 findings annually to the Governor and the Joint Committee on Government and Finance in
22 conjunction with an annual report on the overall status of the department's work force;

23 (7) In coordination with the Division of Personnel, maintain and make available to the
24 public at large a state-wide central registry of employment vacancies and job announcements in
25 the department as provided by its agencies;

26 (8) Specify policies and practices to ensure appropriate consideration of military veterans
27 in filling job vacancies within the departments;

28 (9) Administer compliance with the policies in all agencies in the department;

29 (10) Maintain records of past policies that have been subsequently modified, replaced or
30 otherwise made inapplicable for a period of seven years after the last date on which the policy
31 was effective;

32 (11) Ensure there is sufficient departmental staff necessary to carry out the responsibilities
33 under of this article;

34 (12) Establish an annual budget covering administrative costs of performing the duties
35 and responsibilities in accordance with this article, including the costs of administering federal
36 laws relating to personnel administration as the Governor may direct, including the
37 Intergovernmental Personnel Act of 1970, and to determine an equitable basis of allocating the
38 annual costs among the several agencies in the department; and

39 (13) Ensure compliance with all applicable state and federal statutes, rules and regulations
40 concerning discrimination in employment, personnel administration, and related matters.

41 (b) The secretary of each department may:

42 (1) Permit divisions or agencies within the department to adopt additional or different
43 policies than those adopted pursuant to subdivision (1), subsection (a) of this section;

44 (2) Establish and maintain a department-wide system of pay ranges for all job classes;

45 (3) Define job classes, establish associated minimum qualifications for those classes, and
46 assign those classes to appropriate pay ranges; and

47 (4) Cooperate with the other secretaries in the administration of this article in order to
48 promote public service and establish conditions of service which will attract and retain employees
49 of character and ability and to increase efficiency and economy in governmental departments by
50 improving the methods of personnel administration with full recognition of the requirements and
51 needs of management.

52 (c) The policies referenced in subdivision (1), subsection (a) of this section are exempt
53 from the requirements of article three, chapter twenty-nine-a of this code.

§6C-5-8. Collection, compilation, consolidation, and submission of certain personnel data.

1 Each secretary shall routinely collect from agencies in the secretary's department data,
2 including the number of personnel, salaries, length of service, distribution of employees by filled
3 and unfilled full-time employee positions at the budgetary program level, and other pertinent
4 personnel information for the subsequent fiscal year as prescribed by the Governor.

§6C-5-9. Division of Personnel continued; duties, functions and authority of Division;

Director of the Division of Personnel.

1 (a) The Division of Personnel, previously established pursuant to article six, chapter
2 twenty-nine of this code, is hereby continued within the Department of Administration.

3 (b) Effective July 1, 2017, the Division shall:

4 (1) Upon request, advise agencies or the appointing authorities and supervisory personnel
5 thereof regarding personnel management, disciplinary matters, the provisions of this article, and
6 laws and rules affecting human resource management;

7 (2) Assist and advise the Governor, departments, and agencies in general workforce

8 planning and compliance with this article and policies adopted pursuant to the provisions of this
9 article;

10 (3) Maintain and make available to the public a centralized website featuring a registry of
11 all employment vacancies and job announcements provided by the departments or other entities;

12 Provided, That the Division shall direct or forward all application submissions to the appointing
13 authority and may have no role in the determination of qualifications for appointment;

14 (4) Assist the Panel in the development, consideration, and prescription of model policies;

15 (5) Provide clerical and other support services to the panel in performing its responsibilities
16 under this article;

17 (6) Other functions considered necessary and directed by the Panel to assist it in the
18 establishment and maintenance of a system of personnel management as provided for in this
19 article;

20 (7) If requested by an agency or employee, issue advisory opinions related to the
21 personnel management issues: Provided, That such opinions shall be advisory only and have no
22 binding effect on an agency; and

23 (8) Promulgate a legislative rule pursuant to article three, chapter twenty-nine-a of this
24 code which establishes a uniform policy applicable to all agencies regarding the accrual of annual
25 and sick leave, recognized holidays, and military or court leave.

26 (c) The Secretary of the Department of Administration shall appoint a director of the
27 Division. The Director shall be a person knowledgeable of the application of the merit principles
28 in public employment as evidenced by the obtainment of a degree in business administration,
29 personnel administration, public administration or the equivalent or at least five years of
30 administrative experience. The salary for the director shall be that which is set out in section two-
31 a, article seven, chapter six of this code.

§6C-5-10. Certification of payrolls; wrongfully withholding certification of payroll.

1 (a) No state disbursing or auditing officer shall make or approve or take any part in making

2 or approving any payment for personal service to any person unless the payroll voucher or
3 account of such pay bears the certification of the appropriate secretary, or of his or her authorized
4 agent, that the persons named therein have been appointed and employed in accordance with
5 the provisions of this article and the policies and orders thereunder. The secretary may for proper
6 cause withhold certification from an entire payroll or from any specific item or items thereon. The
7 secretary may, however, provide that certification of payrolls may be made once every six months,
8 and the certification shall remain in effect except in the case of any officer or employee whose
9 status has changed after the last certification of his or her payroll. In the latter case no voucher
10 for payment of salary to such employee shall be issued or payment of salary made without further
11 certification by the secretary.

12 (b) If the secretary wrongfully withholds certification of the payroll voucher or account of
13 any employee, the employee may maintain a proceeding in the courts to compel the secretary to
14 certify such payroll voucher or account.

§6C-5-11. Leave donation program.

1 The Division of Personnel, after consultation with other state agencies, shall establish and
2 maintain a program under which annual leave accrued or accumulated by an employee of an
3 agency may, if voluntarily agreed to by the employee, be transferred to the annual leave account
4 of another designated employee if the other employee requires additional leave because of a
5 medical emergency. The annual leave program shall be established by legislative rule pursuant
6 to the provisions of chapter twenty-nine-a of this code. The division shall prepare an annual status
7 report to be presented to the joint committee on government and finance no later than the fifth
8 day of January each year. Any leave transferred pursuant to this section shall not be used to
9 qualify for or add to service for any retirement system administered by the state of West Virginia.

§6C-5-12. Acts prohibited.

1 (a) No person may make any false statement, certificate, mark, rating or report with regard
2 to any test, certification or appointment made under any provisions of this article or in any manner

3 commit or attempt to commit any fraud preventing the impartial execution of this.

4 (b) No person may, directly or indirectly, give, render, pay, offer, solicit or accept any
5 money, or other valuable consideration for or on account of any certification, appointment,
6 proposed appointment, promotion or proposed promotion to, or any advantage in, a position with
7 the state.

8 (c) No employee may defeat, deceive or obstruct any person in his or her right to
9 examination, eligibility, certification or appointment under this article, or furnish to any person any
10 special or secret information for the purpose of affecting the rights or prospects of any person with
11 respect to employment with the state.

§6C-5-13. Penalties.

1 (a) Any person who willfully violates any provision of this article is guilty of a misdemeanor
2 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in
3 jail not more than one year, or both fined and confined. Jurisdiction under this section shall be in
4 the circuit court of the county where the offense is committed.

5 (b) Any person who is convicted of a misdemeanor under this article is, for a period of five
6 years, ineligible for appointment to or employment in a position with the state, and if he or she is
7 an officer or employee of the state, his or her present office or position is forfeited.

§6C-5-14. Furlough of state employees.

1 (a) For the purposes of this section:

2 (1) "Furlough" means a mandatory, temporary, unpaid leave of absence required pursuant
3 to an executive order issued by the Governor and subject to the conditions set forth in this section;
4 and

5 (2) "Fiscal emergency" means circumstances where there is an overdraft or deficit in the
6 General Revenue Fund, where there is an anticipated deficit in the General Revenue Fund, where
7 a budget bill has not been enacted for the present fiscal year, or where revenues are inadequate
8 for the state to make timely payments of its obligations, including, but not limited to, its debt service

9 payment obligations on outstanding bonds.

10 (b) Where a fiscal emergency occurs in any fiscal year, the Governor may by executive
11 order institute state employee furloughs of limited or indefinite duration as an alternative to a
12 reduction in force, subject to the following conditions:

13 (1) The furlough must be inclusive of all employees within a designated department,
14 agency, division, office, or program, regardless of the source of funds, place of work, or
15 classification.

16 (2) Where a furlough has been instituted, the Governor shall instruct the chief
17 administrator of an affected department, agency, division, office, or program to create a schedule
18 for furlough days or portions of furlough days. Under no circumstances may a department,
19 agency, division, office, or program close completely.

20 (3) An executive order issued pursuant to this section shall address whether affected state
21 employees are entitled to participate in the same state benefits as otherwise available to them
22 during the period of the furlough and the manner in which they may participate.

23 (4) An executive order issued pursuant to this section shall address whether a state
24 employee's reduction in compensation may be allocated over the balance of the fiscal year rather
25 than solely in the pay period or periods in which the furlough occurs.

26 (c) The Governor shall not have the authority to furlough employees of constitutional
27 officers, the Legislature, or the judiciary.

NOTE: The purpose of this bill is to eliminate the state civil service system.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.