

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 3131

BY DELEGATES ELLINGTON, HILL, SUMMERS, ROHRBACH,

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[Originating in the Committee on Government

Organization, February 22, 2019.]

A BILL to amend and reenact §5-5-4 and §5-5-4a of the Code of West Virginia, as amended; and to amend said code by adding thereto a new section, designated §5-5-4c, all relating to employees of the Department of Health and Human Resources; requiring the department to conduct a marketplace analysis; and exempting the department from certain functions of the Division of Personnel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources salary adjustments.

1 The Legislature hereby directs that ~~an across-the-board salary adjustment be provided~~
2 salary schedules be adjusted for employees of the various bureaus and offices of the Department
3 of Health and Human Resources at the discretion of the secretary. This salary adjustments shall
4 be provided from the funding appropriated to the department ~~in the fiscal year 2019~~ annually and
5 may not be construed to require additional appropriations from the Legislature. ~~This adjustment~~
6 ~~is separate from and in addition to any other salary adjustment approved during the 2018 regular~~
7 ~~session of the Legislature relative to the 2019 budget~~. In the event any provision of this section
8 conflicts with any rule, policy, or provision of this code, the provisions of this section control. In
9 determining the salary schedule adjustments, the department may give additional consideration
10 to specific job classifications ~~including, but not limited, to child protective services, as necessary~~
11 to be competitive with comparable private sector salaries and as may be determined relevant by
12 the secretary. Due to the limits of funding, the results of the salary schedule adjustments shall not
13 be subject to the provisions of §6C-2-1 *et seq.* of this code. It is the specific intent of the Legislature
14 that no private cause of action, either express or implied, shall arise pursuant to the provisions or
15 implementation of this section. The department may adjust the salary schedule for any position
16 based upon a wage and compensation analysis of identified market rates for relevant positions.
17 The analysis shall be conducted by the department by July 1, 2019 and every three years,
18 thereafter.

§5-5-4a. Department of Health and Human Resources classifications.

1 (a) The Legislature finds that ~~Mildred Mitchell Bateman Hospital, and William R. Sharpe,~~
2 ~~Jr. Hospital, state-operated acute care, long-term care, clinical and medical facilities,~~ have
3 extreme difficulty in recruiting and retaining employees such as physicians, physician specialists,
4 nurses, nursing directors, health service workers, ~~health service assistants, health service~~
5 ~~associates~~ and other employees who assist in the direct or indirect provision of medical care to
6 patients in those facilities.

7 (b) The ~~West Virginia Division of Personnel and the~~ Department of Health and Human
8 Resources ~~jointly~~ shall develop pay rates and employment requirements to support the
9 recruitment and retention of physicians, physician specialists, nurses, nursing directors, health
10 service workers, ~~health service assistants, health service associates, or other positions at Mildred~~
11 ~~Mitchell Bateman Hospital, and William R. Sharpe, Jr. Hospital, and other employees who assist~~
12 ~~in the direct or indirect provision of medical care to patients in state-operated acute care, long-~~
13 ~~term care, clinical and medical facilities.~~ Pay rates shall reflect the ~~regional~~ identified market rates.
14 for relevant positions. ~~The pay rates and employment requirements shall be put into effect by July~~
15 ~~4, 2009.~~ The secretary may approve hiring. The secretary may adjust compensation, provide a
16 retention incentive, or both, based upon a wage and compensation analysis of identified market
17 rates for relevant positions conducted every three years. In the event any provision of this section
18 conflicts with any rule, policy, or provision of this code, the provisions of this section control.

19 (c) Funding for the pay rates and employment requirements shall be provided from the
20 appropriation to the Department of Health and Human Resources. Due to the limits of funding,
21 the implementation of the pay rates and employment requirements shall not be subject to the
22 provisions of §6C-2-1 *et seq.* of this code. The provisions of this section are rehabilitative in nature
23 and it is the specific intent of the Legislature that no private cause of action, either express or
24 implied, shall arise pursuant to the provisions or implementation of this section.

§5-5-4c. Special employment procedures for Department of Health and Human Resources

personnel.

1 (a) (1) The Department of Health and Human Resources has difficulty filling positions
2 which are essential to protecting the health and welfare of the state's residents. The Legislature
3 finds that the hiring and retention processes of the department must be streamlined to effectively
4 and efficiently meet personnel needs while still affording applicants and employees the due
5 process protections of classified service.

6 (2) The purpose of this section is to allow the Department of Health and Human Resources
7 to employ qualified applicants to vacant and new personnel positions in the department in a timely
8 manner and to ensure that the Department of Health and Human Resources has an adequate
9 workforce sufficient to provide a wide range of necessary and life-saving services to the residents
10 of West Virginia.

11 (b) The secretary shall implement the procedures authorized by the provisions of this
12 section for all the employees of the department to ensure and provide for the selection and
13 retention of competent and qualified personnel. The procedures established pursuant to this
14 section shall be effective on and after July 1, 2019, and shall be subject to the following
15 requirements:

16 (1) The Division of Personnel shall provide competitive registers of eligible applicants
17 when requested by the department to do so within five business days of receipt of the request;

18 (2) Any position to be filled internally shall be posted for seven calendar days before the
19 department may select an applicant. For positions to be filled with an applicant from outside of
20 the department, the public service announcement shall be posted for not less than seven calendar
21 days;

22 (3) Postings shall be active for up to one year;

23 (4) Notwithstanding any provision of law, the department may employ any person listed
24 on the register for employment without regard to the person's position on said register;

25 (5) The department shall have full authority to evaluate applicants for employment or

26 promotion within the department to positions within the classified service and classified-exempt
27 service. The department shall have sole authority to determine whether applicants for positions
28 with the department meet minimum position requirements;

29 (6) The department shall have full authority to make classification determinations for
30 positions within the department by using the classification system approved by the State
31 Personnel Board. The department may independently submit to the State Personnel Board
32 recommendations for the approval of new department classifications or the amendment of current
33 department classifications;

34 (7) The department shall have full authority to exercise its discretion regarding the
35 application of the Division of Personnel's system of compensation for positions in the department
36 within the classified and classified-exempt service: *Provided*, That application of the provisions
37 of this subdivision shall be uniform. The department may independently submit to the State
38 Personnel Board recommendations for the approval of a special pay scale for the department's
39 personnel;

40 (8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of
41 Personnel shall not be a mandatory party to any public employee grievance filed against the
42 department. The Division of Personnel shall not be a signatory to, and may not override or
43 otherwise challenge, the department's decisions regarding settlement terms and conditions in
44 employee grievances or other legal proceedings;

45 (9) The Division of Personnel shall facilitate or perform any lawful action necessary to
46 initiate or complete the department's employment transactions, including, but not limited to,
47 posting positions on applicable systems, initiating public service announcements when requested
48 by the department, and processing necessary forms;

49 (10) The department shall comply with all applicable record retention requirements
50 provided by law;

51 (11) The department is authorized to declare any positions effectively vacant due to

52 employee separations and subject to being filled pursuant to the provisions of this section;

53 (12) The department shall have the flexibility to utilize all vacant position numbers when
54 posting to fill a vacancy and to post vacant positions utilizing multiple classifications with
55 corresponding job descriptions when the secretary determines it to be necessary and in the best
56 interest of the agency; and

57 (13) For purposes of this section, a vacancy created when an employee of the department
58 separates or goes on terminal leave may be posted upon receipt of the notice that the employee
59 has separated or commenced such leave.

60 (c) When seeking applications or making appointments pursuant to the special procedure
61 authorized by subsection (b) of this section, the department is not required to comply with Division
62 of Personnel procedures for seeking applications and making appointments to classified service
63 positions as provided by the provisions of §29-6-1 et seq. of this code or any other provision of
64 this code, including those procedures promulgated by legislative rules. This section does not
65 exempt the department from provisions of this code prohibiting nepotism, favoritism,
66 discrimination, or unethical practices related to employment and promotion, or the public
67 employee grievance system.

68 (d) The provisions of this section shall apply notwithstanding any provisions of §29-6-1 et
69 seq. of this code to the contrary.

70 (e) Classified employees of the department shall continue to be covered by the civil service
71 system and may utilize any applicable public employee grievance process.

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