

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 408**

BY SENATORS TRUMP AND BLAIR

[Introduced February 23, 2017; Referred  
to the Committee on the Government Organization;  
and then to the Committee on the Judiciary]

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 of said code; and to amend said code by adding thereto a new article, designated  
 6 §6C-5-1, §6C-5-2, §6C-5-3, §6C-5-4, §6C-5-5, §6C-5-6, §6C-5-7, §6C-5-8, §6C-5-9, §6C-  
 7 5-10, §6C-5-11, §6C-5-12, §6C-5-13 and §6C-5-14, all relating to public employees; and  
 8 eliminating the state classified service system.

*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 4 Code of West Virginia, 1931, as amended, be repealed; that §6C-2-2 of said code be amended  
 5 and reenacted; and that said code be amended by adding thereto a new article, designated §6C-  
 6 5-1, §6C-5-2, §6C-5-3, §6C-5-4, §6C-5-5, §6C-5-6, §6C-5-7, §6C-5-8, §6C-5-9, §6C-5-10, §6C-  
 7 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:

23 (A) A member of the West Virginia State Police employed pursuant to article two, chapter  
24 fifteen of this code, but does include civilian employees hired by the Superintendent of the State  
25 Police; ~~"Employee" does not mean~~

26 (B) An employee of a Constitutional officer unless he or she is covered under the civil  
27 service system, an employee of the Legislature or a patient or inmate employed by a state  
28 institution; and

29 (C) After June 30, 2017, an employee of a department or an agency or board or any allied,  
30 advisory affiliated or related entity administered as part of a department listed in section one,  
31 article two, chapter five-f of this code; or an employee of the Higher Education Policy Commission  
32 or the West Virginia Council for Community and Technical College Education, and any institution  
33 under their supervision.

34 (f) "Employee organization" means an employee advocacy organization with employee

35 members that has filed with the board the name, address, chief officer and membership criteria  
36 of the organization.

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

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

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

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

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

51 (iii) Any specifically identified incident of harassment;

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

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

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

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

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

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

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

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

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

**ARTICLE 5. STATE PERSONNEL PROCEDURES.**

**§6C-5-1. Purposes; legislative intent; state policy.**

1 (a) It is the purpose of this article to establish in the state a system of personnel  
2 administration which will:

3 (1) Attract, select, and retain the best employees based on merit, free from coercive  
4 political influences, with incentives in the form of equal opportunities for all;

5 (2) Provide technically competent and loyal personnel to render impartial service to the  
6 public at all times and to render service according to the dictates of ethics and morality; and

7 (3) Remove unnecessary and inefficient employees.

8 (b) It is the intent of the Legislature to:

9 (1) Promote this purpose by allowing agencies greater flexibility in personnel management  
10 so as to promote the overall effectiveness and efficiency of state government;

11 (2) Allow each department of state government to operate within a framework of personnel

12 policies and practices; and

13 (3) Ensure that the state's most valued resource, its employees, be managed in a manner  
14 to promote work force productivity and sound business practices.

15 (c) It is hereby declared to be the policy of this state to:

16 (1) Recruit, hire, advance, promote and terminate employees on the basis of their relative  
17 ability, knowledge, and skills, including open consideration of qualified applicants for initial  
18 employment;

19 (2) Provide equitable and adequate compensation based on merit, performance, job value,  
20 and competitiveness within applicable labor markets;

21 (3) Train employees, as needed, to assure high quality performance and to provide work  
22 force skills needed to maintain and advance the state's goals and objectives;

23 (4) Retain employees on the basis of the adequacy of their performance, correcting  
24 inadequate performance where possible and appropriate, and separate employees whose  
25 performance is inadequate; and

26 (5) Treat applicants and employees in all aspects of personnel administration in  
27 compliance with all applicable state and federal equal employment opportunity and  
28 nondiscrimination laws.

**§6C-5-2. Definitions.**

1 As used in this article:

2 “Agency” means all separate and distinct divisions and subdivisions of state government  
3 whose heads are legally authorized to appoint employees to positions; but does not include the  
4 legislative and judicial branches, offices of the Governor, State Auditor, State Treasurer,  
5 Secretary of State, Commissioner of Agriculture and Attorney General.

6 “Appointing authority” means the person or groups of persons authorized by law or  
7 delegated authority to make appointments to fill positions.

8 “Department” means a department identified in section one, article two, chapter five-f of

9 this code, the Higher Education Policy Commission including all the institutions under its  
10 supervision, and the West Virginia Council for Community and Technical College Education  
11 including all the institutions under its supervision.

12 “Medical emergency” means a medical condition of an employee or a family member of  
13 the employee that is likely to require the prolonged absence of the employee from duty and which  
14 will result in a substantial loss of income to the employee because of the unavailability of paid  
15 leave.

16 “Panel” or “advisory panel” means the State Governmental Employee Advisory Panel.

17 “Position” means a set of duties and responsibilities assigned or delegated by competent  
18 authority for performance by one person.

19 “Secretary” means a secretary of a department identified in section one, article two,  
20 chapter five-f of this code, the Chancellor of the Higher Education Policy Commission and the  
21 Chancellor for Community and Technical College Education.

**§6C-5-3. Transfer of classified service employees to unclassified service.**

1 (a) Effective July 1, 2017, all employees of the State of West Virginia who occupied  
2 classified positions under the civil service law are transferred to the unclassified service. The  
3 classified service in the State of West Virginia is abolished as of July 1, 2017.

4 (b) Employees of the state serve as at-will employees, and may be terminated at any time  
5 for any reason, other than an unlawful reason.

**§6C-5-4. State Governmental Employee Advisory Panel created.**

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

2 (b) The Panel consists of the secretaries of the departments created in section two, article  
3 one, chapter five-f of this code, the Chancellor of the Higher Education Policy Commission and  
4 the Chancellor for Community and Technical College Education, or their designees.

5 (b) Members of the State Governmental Employee Advisory Panel may receive no  
6 additional compensation for service on the panel.

7           (c) Seven members is a quorum. Only the votes of a majority of the members present is  
 8 necessary for the transaction of any business or discharge of any duties of the State  
 9 Governmental Employee Advisory Panel, if there is a quorum present at the time of the vote.

**§6C-5-5. Duties and functions of State Governmental Employee Advisory Panel generally; compensation; quorum.**

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

7           (c) The advisory panel shall:

8           (1) Represent the public interest in the improvement of personnel administration in all state  
 9 departments;

10          (2) Determine appropriate human resource management goals and objectives and  
 11 prescribe model policies for their accomplishment;

12          (3) At public meetings, adopt and amend model policies that may be adopted and used in  
 13 effectuating the state's personnel management system, pursuant to section six of this article, no  
 14 later than January 1, 2018;

15          (4) Promote adherence to state and federal laws;

16          (5) Promote public understanding of the purposes, policies, and practices of the state  
 17 personnel system; and

18          (6) Advise and assist the several state departments; and

19          (7) Secure the interest of institutions of learning and of civic, professional, and other  
 20 organizations in the improvement of personnel standards under the state's personnel system.

**§6C-5-6. Model policies.**

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

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

5 (2) Provisions defining and prohibiting improper political activity by employees covered  
6 under the terms of this article;

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

11 (4) Provisions necessary to conform to the minimum standards for merit systems of  
12 personnel administration as specified by those federal departments from which federal funds are  
13 obtained for use by the several state departments covered by 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 nontemporary employees;

18 (7) Policies under which annual leave accrued or accumulated by an employee of an  
19 agency may, if voluntarily agreed to by the employee, be transferred to the annual leave account  
20 of another designated employee if the other employee requires additional leave because of a  
21 medical emergency; and

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

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

26 (B) Up to fifty-six hours of leave with pay during each calendar year to use during those

27 hours when the employee is absent from work because of the employee's donation of adult bone  
28 marrow; and

29 (C) To be compensated at the employee's regular rate of pay for those regular work hours  
30 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 July 1, 2018, adopt as departmental policies the model policies developed  
3 by the panel with any modifications the secretary finds necessary or desirable to accommodate  
4 the secretary's department: *Provided*, That a secretary may choose not to adopt one or more of  
5 the model policies adopted by the panel if, after review of the model policy, he or she determines  
6 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 and leave,  
8 including but not limited to, holidays, work schedules, accrual of annual and sick leave, military  
9 leave, court, jury and hearing leave: *Provided*, That the Higher Education Policy Commission is  
10 exempt from this requirement;

11 (3) Develop and maintain a common employment application form to be used by all  
12 applicants for employment within the department, which form may be supplemented as necessary  
13 by agencies in seeking information about agency job classes;

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

16 (5) In consultation with agencies, establish criteria for the implementation of policies  
17 adopted by the secretary which agencies shall use in developing internal processes for  
18 compensation, pay for performance, and performance management, including processes  
19 involved in defining job classes, establishing and applying associated minimum qualifications,  
20 developing and applying applicant screening methods, and measuring worker effectiveness;

21 (6) Audit agencies' processes as referred to in paragraph (3) of this subsection and report

22 findings annually to the Governor and the Joint Committee on Government and Finance in  
23 conjunction with an annual report on the overall status of the department's work force;

24 (7) Maintain and make available to the public at large a state-wide central registry of  
25 employment vacancies and job announcements in 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. Disposition of Division of Personnel, property and funds.**

1 (a) Pursuant to the provisions of section twelve, article ten, chapter four of this code, the  
 2 Division of Personnel continues in existence until July 1, 2018. The Division of Personnel is  
 3 abolished effective July 1, 2018.

4 (b) During the wind-up period, the Division of Personnel shall assist the panel and the  
 5 departments in their employment related responsibilities, including but not limited to:

6 (1) Evaluating applicants for appointment or promotion to positions;

7 (2) Applying the system of compensation for positions;

8 (3) Establishing and maintaining records of employment for employees;

9 (4) Advising appointing authorities and supervisory personnel regarding disciplinary  
 10 matters, the provisions of this article, policies implementing the provisions of this article, and laws  
 11 and policies affecting human resource management;

12 (5) Providing training in human resource management and the operation of the state  
 13 personnel system;

14 (6) Assisting the departments in compliance with this article and policies adopted pursuant

15 to the provisions of this article;

16 (7) Assisting the panel in its consideration and development of policies;

17 (8) Providing clerical and other support services to the panel in performing its  
18 responsibilities under this article; and

19 (9) Other functions considered necessary by the panel to assist it in the establishment of  
20 a system of personnel administration as provided in this article.

21 (c) If, by the deadline set forth in subsection (a) of this section, it is determined that there  
22 remains a need for some employees of the Division of Personnel, the Department of  
23 Administration may retain employees necessary to ensure a smooth and orderly wind-up of the  
24 division and the classified service system.

25 (d) The provisions of section fourteen of the Division of Personnel's Administrative Rule,  
26 143 CSR 1, are to remain in effect until July 1, 2018. The remaining portions of the Administrative  
27 Rule are repealed.

**§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. Refusal to testify.**

1 If any employee willfully refuses or fails to appear before any court or judge, any legislative  
2 committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having  
3 appeared refuses to testify or answer any question relating to the affairs or government of the  
4 state or the conduct of any state officer or employee on the ground that his or her testimony or  
5 answers would tend to incriminate him or her, or refuses to accept a grant of immunity from  
6 prosecution on account of any matter about which he or she may be asked to testify at any such  
7 hearing or inquiry, he or she forfeits his or her office or position and is not eligible after that for  
8 appointment to any position.

**§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 in  
7 the covered or uncovered service.

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 in the covered or uncovered service.

**§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

3 in jail for a period not to exceed one year, or both fined and confined. Jurisdiction under this  
4 section is in 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 in the covered or uncovered  
7 service, and if he or she is an officer or employee of the state, his or her present office or position  
8 is forfeited.

**§6C-5-14. Employee representative organization bulletin boards.**

1 A bulletin board of a limited size shall be provided for posting notices of employee  
2 representative organizations. The bulletin boards shall be placed in convenient and generally  
3 accessible locations in all workplaces where the members of the organizations are employed.  
4 Provisions shall be made for separate bulletin boards for each employee representative  
5 organization. The cost of the bulletin boards shall be assumed by the requesting employee or the  
6 employee's representative organization. The boards may be used exclusively by the employee  
7 representative organization and for organization purposes only.

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.