

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 530

SENATOR TRUMP, *original sponsor*

[Originating in the Committee on the Judiciary;

Reported on February 23, 2019]

1 A BILL to repeal §29-6-7a, §29-6-9, §29-6-10a, §29-6-14, and §29-6-25 of the Code of West
2 Virginia, 1931, as amended; and to amend and reenact §29-6-1, §29-6-2, §29-6-3, §29-
3 6-4, §29-6-6, §29-6-7, §29-6-8, §29-6-10, §29-6-12, §29-6-16, §29-6-17, §29-6-19, §29-
4 6-20, §29-6-21, §29-6-22, §29-6-23, §29-6-24, and §29-6-27 of said code, all relating to
5 the state employee merit system; defining terms; allowing Governor to make additions to
6 classified service; providing exemptions to classified service; providing makeup and duties
7 of the State Personnel Board; defining a quorum; providing for bimonthly meetings and
8 emergency meetings of the board; revising the Director of Personnel's duties; providing
9 the director may develop programs that include monetary incentives; allowing director to
10 establish pilot projects that may delegate functions to appointing authorities; establishing
11 board will review and approve all classified exempt positions and all classification and pay
12 plans; providing rulemaking for the Division of Personnel; removing classification and
13 compensation determinations from grievance procedure; establishing that no private
14 cause of action exists for violations of the section; authorizing the division prepare,
15 maintain, and revise pay plans; establishing the rates in pay plan be automatically
16 adjusted upon across-the-board raises; providing authority of Governor to restrict the pay
17 plan upon fiscal constraints; establishing that record of performance be considered
18 whether to extend or withhold a benefit from an employee; revising the process for
19 postings of positions by the agency and DOP; providing appointing authority may reject
20 candidate for criminal background or having been convicted of corruption; providing that
21 an appointing authority may select from top 20 percent of applicants on register and above
22 80 percent score on examination; modifying term "discharge" to "dismissal"; providing for
23 leave of absence for state employees not working due to work-related injury; clarifying that
24 state employees not eligible for certain offices even if declining to receive compensation;
25 establishing the confidentiality of employee records; allowing local political subdivisions to

26 participate in the classified service system; amending penalties section; and providing that
27 leave donation program be established through rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ~~CIVIL SERVICE~~ DIVISION OF PERSONNEL SYSTEM.

§29-6-1. General Purpose.

1 The general purpose of this article is to attract to the service of this state personnel of the
2 highest ability and integrity by the establishment of a system of personnel administration based
3 on merit principles and scientific methods governing the appointment, promotion, transfer, layoff,
4 removal, discipline, classification, compensation, and welfare of its ~~civil~~ merit system employees,
5 and other incidents of state employment. All appointments and promotions to positions in the
6 classified service shall be made solely on the basis of merit and fitness, except as hereinafter
7 specified. All employment positions not in the classified service, with the exception of the ~~board~~
8 ~~of regents~~ Higher Education Policy Commission, Council for Community and Technical College
9 Education, and higher education governing boards are included in a classification plan known as
10 classified-exempt service.

§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates otherwise, the term:

2 (a) "Administrator" means any person who fills a statutorily created position within or
3 related to an agency or board (other than a board member) and who is designated by statute as
4 ~~commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief,~~
5 ~~executive director, executive secretary, superintendent, deputy superintendent or other~~
6 ~~administrative title, however designated~~ the head of the agency or board;

7 (b) "Agency" means any ~~administrative unit of state government, including any authority,~~
8 ~~board, bureau, commission, committee, council, division, section or office~~ authority, board,
9 bureau, commission, division, or other entity of state government, however designated,
10 transferred to or incorporated in one of the departments created in §5F-1-2 of this code, as well

11 as any affiliated county or municipal agency: *Provided*, That individual districts, offices, regions,
12 sections and units within the same agency, however designated, shall not be considered a
13 separate agency;

14 (c) "Appointing authority" means ~~a person or group of persons authorized by an agency to~~
15 ~~make appointments to positions~~ the executive or head of a department or agency who is
16 authorized by statute to appoint employees in the classified or classified-exempt service;

17 (d) "Board" means the State Personnel Board created by §29-6-6 of this code;

18 (e) "Class" or "class of positions" means ~~a group of~~ one or more positions sufficiently
19 similar in duties, training, experience and responsibilities, as determined by specifications, that
20 the same qualifications, the same title and the same schedule of compensation ~~and benefits~~ may
21 be equitably applied to each position in the ~~group~~ class;

22 (f) "Class specification" means the official description of a class of positions for the purpose
23 of describing the nature of work, providing examples of work performed, and identifying the
24 knowledge, skills, and abilities required while stating the generally accepted minimum
25 qualifications required for employment;

26 (f) (g) "Classification plan" means the plan by which positions in the classified service and
27 classified-exempt service have been allocated by class;

28 (g) (h) "Classified-exempt service" means, as established by statute, ~~an employee whose~~
29 ~~position satisfies those positions which satisfy~~ the definitions for "class" and "classify" but ~~who is~~
30 which are not covered under the civil service Division of Personnel merit system or employed by
31 the higher education governing boards Higher Education Policy Commission, Council for
32 Community and Technical College Education, or higher education governing boards, as defined
33 in §18B-1-2 of this code;

34 (h) (i) "Classified service" means ~~an employee whose job satisfies those positions which~~
35 satisfy the definitions for "class" and "classify" and ~~who is~~ are covered under the ~~civil service~~
36 Division of Personnel merit system;

37 ~~(i) (j)~~ “Classify” means ~~to group all positions in classes and to allocate every position to~~
38 ~~the appropriate class in the classification plan~~ the process of ascertaining, analyzing, and
39 evaluating the duties and responsibilities of positions to determine the number and kind of classes
40 existing in the service and to group the positions in classes;

41 ~~(k)~~ (l) “Department” means the departments of the executive branch of state government
42 provided in §5F-1-2 of this code;

43 ~~(j) (l)~~ “Director” means the head of the Division of Personnel as appointed by §29-6-7 of
44 this code;

45 ~~(k) (m)~~ “Division” means the Division of Personnel herein created;

46 ~~(n)~~ (o) “Exempt service” means all positions specifically exempted from the classified service
47 by statute;

48 ~~(j) (o)~~ “Policy-making position” means a position in which the person occupying it: (1) Acts
49 as an advisor to or formulates plans for the implementation of broad goals for an administrator or
50 the Governor; (2) is in charge of a major administrative component of the agency; and (3) reports
51 directly and is directly accountable to ~~an~~ the administrator or the Governor;

52 ~~(m) (p)~~ “Position” means ~~a particular job which has been classified based on specifications~~
53 an authorized and identified group of duties and responsibilities assigned by the proper authority
54 requiring the full-time or part-time employment of at least one person;

55 ~~(n) (q)~~ “Secretary” means the Secretary of the Department of Administration created in
56 §5F-1-2 of this code;

57 ~~(e)~~ “Specification” means ~~a description of a class of position which defines the class,~~
58 ~~provides examples of work performed and the minimum qualifications required for employment~~

59 ~~(p) (r)~~ “Veteran” means any person who ~~has served in the armed forces of the United~~
60 ~~States of America during World War I (April 6, 1917—November 11, 1918), World War II~~
61 ~~(December 7, 1941—December 31, 1946), the Korean Conflict (June 27, 1950—January 31,~~
62 ~~1955), the Vietnam Conflict (August 5, 1964—May 7, 1975) or in a campaign, expedition or conflict~~

63 ~~for which a campaign badge has been authorized and received by such person and who has~~
64 ~~received a discharge under honorable conditions from such service~~ meets the requirements of
65 §6-13-1 of this code.

§29-6-3. Classified service; additions to classified service.

1 (a) The classified service includes all positions covered by the ~~civil service~~ Division of
2 Personnel merit system as of the effective date of this article, except as otherwise provided in this
3 article. Positions may be added to the classified service as provided in §29-6-4 of this code.

4 (b) Except during the last six months of his or her term, the Governor may, by executive
5 order, with the written consent of the board and the appointing authority concerned, add to the list
6 of positions in the classified service, but such additions shall not include any positions specifically
7 exempted from coverage as provided in §29-6-4 of this code.

§29-6-4. Classified-exempt and exempt service ~~additions to classified service; exemptions.~~

1 ~~(a) The classified-exempt service includes all positions included in the classified-exempt~~
2 ~~service on the effective date of this article.~~

3 ~~(b) Except for the period commencing on July 1, 1992, and ending on the first Monday~~
4 ~~after the second Wednesday of the following January and except for the same periods~~
5 ~~commencing in the year 1996, and in each fourth year thereafter, the Governor may, by executive~~
6 ~~order, with the written consent of the State Personnel Board and the appointing authority~~
7 ~~concerned, add to the list of positions in the classified service, but the additions may not include~~
8 ~~any positions specifically exempted from coverage as provided in this section~~

9 ~~(c)~~ (a) The following offices and positions, in addition to those specifically exempted by
10 statute ~~are exempt from coverage under the classified~~ in the classified-exempt or exempt service:

- 11 (1) All judges, officers and employees of the judiciary are exempt;
12 (2) All members, officers and employees of the Legislature are exempt;
13 (3) All officers elected by popular vote and employees of the officer are exempt;

14 (4) All secretaries of departments and employees within the office of a secretary are
15 exempt;

16 (5) Members of boards and commissions and heads of departments appointed by the
17 Governor or heads of departments selected by commissions or boards when expressly exempt
18 by law or board order are exempt;

19 (6) ~~Excluding the policy-making positions in an agency, one~~ One principal assistant or
20 deputy and one private secretary for each board or commission or head of a department elected
21 or appointed by the Governor or Legislature are classified-exempt, unless specifically exempted
22 by statute;

23 (7) All policy-making positions are classified-exempt, unless specifically exempted by
24 statute;

25 (8) Patients or inmates employed in state institutions are exempt;

26 (9) Persons employed in a professional or scientific capacity to make or conduct a
27 temporary and special inquiry, investigation, or examination on behalf of the Legislature or a
28 committee thereof, ~~an executive a~~ a department, affiliated county or municipal agency or by
29 authority of the Governor are exempt;

30 (10) All employees of the office of the Governor, including all employees assigned to the
31 executive mansion are exempt;

32 (11) Part-time professional personnel engaged in professional services without
33 administrative duties and personnel employed for 1,000 hours or less during a working year are
34 classified-exempt;

35 (12) Members and employees of the board of trustees and board of directors or their
36 successor agencies are exempt;

37 (13) Uniformed personnel of the State Police are exempt; and

38 (14) Seasonal employees in the state forests, parks, and recreational areas working less
39 than 1,733 hours per calendar year are exempt. Notwithstanding any provision of law to the
40 contrary, seasonal employees are not considered full-time employees.

41 ~~(d)~~ (b) The Legislature finds that the holding of political beliefs and party commitments
42 consistent or compatible with those of the Governor contributes in an essential way to the effective
43 performance of and is an appropriate requirement for occupying certain offices or positions in
44 state government, such as the secretaries of departments and the employees within their offices,
45 the heads of agencies appointed by the Governor and, for each such head of agency, a private
46 secretary and one principal assistant or deputy, all employees of the office of the Governor
47 including all employees assigned to the executive mansion, as well as any persons appointed by
48 the Governor to fill policy-making positions, in that those offices or positions are confidential in
49 character and require their holders to act as advisors to the Governor or the Governor's
50 appointees, to formulate and implement the policies and goals of the Governor or the Governor's
51 appointees, or to help the Governor or the Governor's appointees communicate with and explain
52 their policies and views to the public, the Legislature and the press.

53 ~~(e) All county road supervisor positions are covered under the classified service effective~~
54 ~~July 1, 1999. A person employed as a county road supervisor on the effective date of this section,~~
55 ~~is not required to take or pass a qualifying or competitive examination upon or as a condition of~~
56 ~~becoming a classified service employee. All county road supervisors who become classified~~
57 ~~service employees pursuant to this subsection who are severed, removed or terminated in his or~~
58 ~~her employment must be severed, removed or terminated as if the person was a classified service~~
59 ~~employee~~

**§29-6-6. State Personnel Board continued; members; term; quorum; vacancies; powers
and duties.**

1 ~~(a) There is continued within the Division a~~ The State Personnel Board consisting shall be
2 made up of the Secretary of the Department of Administration or his or her designee who serves

3 as an ex officio nonvoting member and five members appointed by the Governor, with the advice
4 and consent of the Senate, for terms of four years and until the appointment of their successors.
5 No more than four members may be of the same political party. ~~Four~~ A simple majority of voting
6 members of the board ~~constitute~~ constitutes a quorum.

7 (b) A member of the board may not be removed from office except for official misconduct,
8 incompetence, neglect of duty, gross immorality, or malfeasance and then only in the manner
9 prescribed in §6-6-1 *et seq.* of this code for the removal by the Governor of state elected officers.

10 (c) Citizen members of the board shall each be compensated for attending official
11 meetings or engaging in official duties not to exceed the amount paid to members of the
12 Legislature for their interim duties, as recommended by the Citizens Legislative Compensation
13 Commission as authorized by law, and may be reimbursed actual and necessary expenses
14 incurred for each day or portion thereof engaged in the discharge of official duties in a manner
15 consistent with guidelines of the Travel Management Office of the Department of Administration.

16 (d) The Secretary of the Department of Administration or his or her designee serves as
17 chair of the board. The ~~Board~~ board shall meet at the time and place specified by the call of the
18 ~~Chair~~ chair. At least one meeting shall be held ~~in each month~~ bimonthly: *Provided, That*
19 emergency meetings shall occur as needed. All meetings shall be open to the public. Notice of
20 each meeting shall be given in writing to each member by the ~~Director~~ director at least three days
21 in advance of the meeting period.

22 (e) In addition to other powers and duties invested in it by this article or by any other law,
23 the board shall:

24 (1) ~~Propose~~ Approve filing of proposed rules for legislative approval, in accordance with
25 §29A-1-1 *et seq.* of this code, to implement the provisions of this article; and

26 ~~(2) Interpret the application of this article to any public body or entity; and~~

27 ~~(3)~~ (2) Authorize and conduct any studies, inquiries, investigations, or hearings in the
28 operation of this article it considers necessary.

29 (f) The ~~Director~~ director or the board may subpoena and require the attendance of
30 witnesses in the production of evidence or documents relevant to any proceeding under this
31 article.

§29-6-7. Director of Personnel; appointment; qualifications; powers and duties.

1 (a) The Secretary of the Department of Administration shall appoint the ~~director~~ Director
2 of Personnel. The director shall be a person knowledgeable of the application of the merit
3 principles in public employment as evidenced by the obtainment of a degree in business
4 administration, personnel administration, public administration, or the equivalent or at least five
5 years of administrative experience. The salary for the director shall be that which is set out in §6-
6 7-2a of this code.

7 (b) The director shall:

8 (1) Consistent with the provisions of this article, administer the operations of the division,
9 allocating the functions and activities of the division among sections as the director may establish;

10 (2) Maintain a ~~personnel management information system~~ systems necessary to carry out
11 the provisions of this article;

12 (3) ~~Supervise payrolls and audit payrolls, reports or transactions for~~ Audit and approve or
13 deny approval of personnel transactions, reports, orders, and settlement agreements to ensure
14 conformity with the provisions of this article;

15 (4) Plan, evaluate, administer, and implement personnel programs and policies in state
16 government and to political subdivisions after agreement by the parties;

17 (5) Supervise the employee selection process and employ performance evaluation
18 procedures;

19 (6) Develop programs to improve efficiency and effectiveness of the public service,
20 including, but not limited to, employee training, development, assistance, and incentives, which,
21 notwithstanding any provision of this code to the contrary, may include a ~~one-time~~ monetary
22 incentive incentives authorized by the State Personnel Board; ~~for recruitment and retention of~~

23 ~~employees in critically understaffed classifications. The director, in consultation with the board,~~
24 ~~shall determine which classifications are critically understaffed. The one-time monetary incentive~~
25 ~~program shall continue until June 30, 2009. The director shall report annually on or before~~
26 ~~December 31, commencing in the year 2007, to the Joint Committee on Government and Finance.~~
27 ~~The annual report shall provide all relevant information on the one-time monetary incentive~~
28 ~~program and the understaffed classifications in state agencies~~

29 (7) Establish pilot programs and other projects for a maximum of one year: ~~outside of the~~
30 Provided, That the previous of the pilot programs or projects are not contrary to the provisions of
31 this article, subject to approval by the board, to be included in the annual report. Such programs
32 may include delegation of functions provided in this article to appointing authorities, subject to the
33 audit and oversight of the director and board;

34 (8) Establish and provide for a public employee interchange program and may provide for
35 a voluntary employee interchange program between public and private sector employees;

36 (9) Establish an internship program;

37 (10) Assist the Governor and Secretary of the Department of Administration in general
38 workforce planning and other personnel matters;

39 (11) Make an annual report to the Governor and Legislature and all other special or
40 periodic reports as may be required;

41 (12) Assess cost for special or other services;

42 (13) Recommend rules to the board for implementation of this article and interpret Division
43 of Personnel statutes, rule and policy; and

44 (14) ~~Conduct schools, seminars or classes for supervisory~~ Provide training and
45 development programs for employees of the state regarding handling of complaints and
46 disciplinary matters and the operation of the state personnel system.

§29-6-7a. Report on a centralized personnel system.

1 [Repealed.]

§29-6-8. Duties of board generally.

1 In addition to the duties expressly set forth elsewhere in this article, the board shall:

2 (1) Represent the public interest in the improvement of personnel administration in the
3 classified service.

4 (2) Advise the Governor, the secretary, and the director on problems concerning personnel
5 administration.

6 (3) Foster the interest of institutions of learning and of industrial, civic, professional and
7 employee organizations in the improvement of personnel standards in the classified service.

8 (4) Make any investigation which it may consider desirable concerning the administration
9 of personnel in the classified service and make recommendations to the director with respect
10 thereto.

11 ~~(5) Approve the budget as prepared by the director for administration of this article before~~
12 ~~submission to the Division of Finance and administration~~ Review and approve the establishment
13 of all classified-exempt positions to assure consistent interpretation of the provisions of this article.

14 (6) Approve classification and pay plans as established by the division.

**§29-6-9. Civil Service Commission abolished; transfer of duties and responsibilities; rule
of construction; transfer of employees, equipment, and records; continuation of
programs; protections and rules.**

1 [Repealed.]

§29-6-10. Rules of division.

1 The ~~board~~ division shall have the authority to promulgate, amend, interpret or repeal rules,
2 according to chapter 29A of this code, to implement the provisions of this article:

3 (1) For the preparation, maintenance, and revision of a position classification ~~plan~~ plans
4 for all positions in the classified ~~service and a position classification plan for all positions in the~~
5 and classified-exempt service, based upon similarity of duties performed and responsibilities
6 assumed, so that the same qualifications may reasonably be required for and the same schedule

7 of pay may be equitably applied to all positions in the same class within their respective plans.
8 Except for persons employed by the ~~governing boards of higher education~~ Higher Education
9 Policy Commission, Council for Community and Technical College Education, and higher
10 education governing boards, all persons receiving compensation as a wage or salary, funded
11 either in part or in whole by the state, are included in either the position classification plan for
12 classified service or classified-exempt service. After each such classification plan has been
13 approved by the board, the director shall allocate the every position of ~~every~~ employee in the
14 classified ~~service to one of the classes in the classified plan and the position of every employee~~
15 ~~in the~~ and classified-exempt service to one of the ~~positions in the classified-exempt~~ classifications
16 in their respective plan. Any employee or appointing authority affected by the allocation of a
17 position to a class shall, after filing with the director ~~of personnel~~ a written request for
18 reconsideration thereof in such manner and form as the director may prescribe, be given a
19 reasonable opportunity to be heard thereon by the director. ~~The interested appointing authority~~
20 ~~shall be given like opportunity to be heard~~ Notwithstanding any other provisions of this code to
21 the contrary, classification and pay grades are not subject to the provisions of §6C-2-1 et seq. of
22 this code: *Provided*, That the division shall maintain rules to provide due process to employees
23 subject to adverse classification and pay grade determinations. Further, it is the specific intent of
24 the Legislature that no private cause of action, either express or implied, is created by or otherwise
25 arises from the enactment, provisions, or implementation of this section.

26 (2) For preparation, maintenance, and revision of a pay plan for all employees in the
27 classified service, after consultation with appointing authorities and the state fiscal officers, and
28 after a public hearing held by the board. Such pay plan shall become effective only after ~~it has~~
29 ~~been approved by the Governor after submission to him by the board~~ approval by the Governor.
30 Amendments to the pay plan may be made in the same manner: *Provided*, That the minimum and
31 maximum rates established in the pay plan shall be automatically adjusted by an amount
32 equivalent to 50 percent of each across-the-board raise authorized by the Legislature. Each

33 employee shall be paid at one of the rates set forth in the pay plan for the class of position in
34 which he or she is employed. The principle of equal pay for equal work ~~in the several agencies of~~
35 ~~the state government~~ shall be followed in the pay plan as established hereby. The Governor or
36 his or her designee shall have authority to restrict the provisions of the pay plan as necessitated
37 by fiscal constraints.

38 (3) For open ~~competitive examinations to test the relative fitness~~ competition of applicants
39 for the respective positions in the classified service. ~~Such examinations need not be held until~~
40 ~~after the rules have been adopted, the service classified and a pay plan established, but shall be~~
41 ~~held not later than one year after this article takes effect.~~ Such examinations competition may be
42 by examination or by review of the training, experience and other qualifications required for a
43 position and shall be announced publicly at least ~~fifteen~~ 10 calendar days in advance of the date
44 fixed for the filing of applications therefor, and may be advertised through the press, radio and
45 other media. The director may, however, in his or her discretion, include in the announcement a
46 limit on the number of applications that will be considered or may continue to receive applications
47 and examine candidates long enough to assure a sufficient number of ~~eligibles~~ eligible candidates
48 to meet the needs of the service and may add the names of successful eligible candidates to
49 existing eligible lists in accordance with their respective ratings.

50 ~~An additional five points shall be awarded to the score of any examination successfully~~
51 ~~completed by a veteran~~ Any veteran shall have an additional five points added to his or her
52 examination or review score: *Provided, That* a disabled veteran shall be entitled to an additional
53 10 points, rather than five points. ~~as aforesaid, upon successful completion of any examination~~

54 (4) For promotions within the classified service which shall give appropriate consideration
55 to the applicant's qualifications, record of performance, seniority and his or her score on a written
56 examination, when such examination is practicable. ~~An advancement in rank or grade or an~~
57 ~~increase in salary beyond the maximum fixed for the class~~ A change in the status of an employee
58 from a position in one class to a vacant position in another class of higher rank as measured by

59 salary range and increased level of duties or responsibilities shall constitute a promotion. When
60 any benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal
61 of a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is
62 required between two or more employees in the classified service as to who will receive the benefit
63 or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal
64 ~~or similar~~ qualifications and records of performance, consideration shall be given to the level of
65 seniority of each of the respective employees as a factor in determining which of the employees
66 will receive the benefit or have the benefit withdrawn, as the case may be. ~~When an employee~~
67 ~~classified in a secretarial or clerical position has, irrespective of job classification, actual job~~
68 ~~experience related to the qualifications for a managerial or supervisory position, the division shall~~
69 ~~consider the experience as qualifying experience for the position~~ The division in its classification
70 ~~plan~~ plans may, for designated classifications, permit substitution of qualifying experience for
71 specific educational or training requirements at a rate determined by the division.

72 (5) ~~For layoffs by classification for reason of lack of funds or work, or abolition of a position,~~
73 ~~or material changes in duties or organization, or any loss of position because of the provisions of~~
74 ~~this subdivision~~ due to business necessity and for recall of employees so laid off, consideration
75 shall be given to an employee's seniority as measured by permanent employment in the classified
76 service or a state agency and an employee's record of performance. In the event that the agency
77 wishes to lay off a more senior employee, the agency must demonstrate that the senior employee
78 cannot perform ~~any other~~ the job duties of a position held by less senior employees within that
79 agency in the job class or any other equivalent or lower job class for which the senior employee
80 is qualified: *Provided*, That if an employee refuses to accept a position in a lower job class, such
81 employee shall retain all rights of recall as hereinafter provided.

82 (6) For recall of employees, recall shall be by reverse order of layoff to any job class that
83 the employee has previously held or a lower class in the series within the agency as that job class
84 becomes vacant. An employee will retain his or her place on the recall list for the same period of

85 time as his or her seniority on the date of his or her layoff or for a period of two years, whichever
86 is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job
87 class in the series until all eligible employees on layoff are given the opportunity to refuse that job
88 class. An employee shall be recalled onto jobs within the county wherein his or her last place of
89 employment is located or within a county contiguous thereto. Any laid-off employee who is eligible
90 for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility
91 of the employee to notify the agency of any change in his or her address.

92 Notwithstanding any other provision of the code to the contrary, ~~except for the provisions~~
93 ~~of section seven, article two, chapter five b of this code~~ when filling vacancies at state agencies
94 ~~the directors of state agencies~~ the appointing authority shall, for a period of 12 months after the
95 layoff of a permanent classified employee in another agency, give preference to qualified
96 permanent classified employees based on seniority and fitness over all but existing employees of
97 the agency or its facilities: *Provided*, That employment of these persons who are qualified and
98 who were permanently employed immediately prior to their layoff shall not supersede the recall
99 rights of employees who have been laid off in such agency or facility.

100 (7) For the establishment of ~~eligible lists~~ of eligible candidates for appointment and
101 promotion within the classified service ranked in order based upon their examination score or
102 review. ~~upon which lists shall be placed the names of successful candidates in the order of their~~
103 ~~relative excellence in the respective examinations~~ Eligibility for appointment from any such list
104 shall continue not longer than three years. An appointing authority shall make ~~his~~ a selection from
105 the top ~~ten~~ 20 names on the appropriate lists of ~~eligibles~~ eligible candidates, or may choose any
106 person scoring at or above the ~~ninetieth~~ 80th percentile on the examination.

107 For the establishment of ~~eligible lists~~ of eligible candidates for preference as provided in
108 subdivision (6) of this section, a list shall be provided according to seniority. An ~~appointed~~
109 appointing authority shall make the selection of the most senior qualified person: *Provided*, That

110 eligibility for appointment from any such list shall continue not longer than one year and shall
111 cease immediately upon appointment to a classified position.

112 (8) For the rejection of candidates ~~or eligibles~~ within the classified service who fail to
113 comply with reasonable requirements ~~in regard to~~ regarding such factors as age, physical
114 condition, character, criminal background, training, and or experience; ~~who are addicted to alcohol~~
115 ~~or narcotics~~ or who have attempted any deception or fraud in connection with an examination; or
116 who have been convicted of corruption while in office.

117 (9) For a ~~period of probation~~ probationary period not to exceed one year before
118 appointment ~~or promotion~~ may be made complete within the classified service.

119 (10) For provisional employment without competitive examination within the classified
120 service when there is no appropriate ~~eligible~~ list of eligible candidates available. No such
121 provisional employment may continue longer than six months, nor shall successive provisional
122 appointments be allowed. ~~except during the first year after the effective date of this article, in order~~
123 ~~to avoid stoppage of orderly conduct of the business of the state~~

124 (11) For ~~keeping~~ the maintenance of records of performance of all employees in the
125 classified service, which service records may be considered in determining salary increases and
126 decreases provided in the pay plan; as a factor in ~~promotion tests~~ promotions; as a factor in
127 determining the order of layoffs ~~because of lack of funds or work~~ and in reinstatement; and as a
128 factor in demotions, ~~discharges~~ dismissals and transfers.

129 (12) For ~~discharge~~ dismissal or reduction in rank or grade only for cause of employees in
130 the classified service. ~~Discharge~~ Dismissal or reduction of these employees shall take place only
131 after the person to be ~~discharged~~ dismissed or reduced has been presented with the reasons for
132 such ~~discharge~~ dismissal or reduction stated in writing, and has been allowed a reasonable time
133 to reply thereto in writing, or upon request to appear personally and reply to the appointing
134 authority or his or her ~~deputy~~ designee: *Provided*, That upon an involuntary ~~discharge~~ dismissal
135 for cause, the employer may require immediate separation from the workplace, or the employee

136 may elect immediate separation. If separation is required by the employer in lieu of any advance
137 notice of ~~discharge~~ dismissal, or if immediate separation is elected by an employee who receives
138 notice of an involuntary ~~discharge~~ dismissal for cause, the employee is entitled to receive
139 severance pay attributable to time the employee otherwise would have worked, up to a maximum
140 of 15 calendar days following separation. Receipt of severance pay does not affect any other right
141 to which the employee is entitled with respect to the ~~discharge~~ dismissal. The statement of
142 reasons for the dismissal and the reply shall be filed as a public record with the director.
143 Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be
144 ~~discharged~~ dismissed from the classified service for absenteeism ~~upon using~~ solely due to
145 exhausting all entitlement to annual leave and sick leave when such use has been due to illness
146 or injury as verified by a physician's certification or for other extenuating circumstances beyond
147 the employee's control ~~unless~~ except when his or her disability is of such a nature as to
148 permanently incapacitate him or her from the performance of the duties of his or her position or
149 renders his or her services unreliable. Upon exhaustion of annual leave and sick leave ~~credits~~ for
150 the reasons specified herein and with certification by a physician that the employee is temporarily
151 unable to perform his or her duties, a permanent employee shall be granted a medical leave of
152 absence without pay for a period not to exceed six months, provided that if such employee is not
153 permanently unable to satisfactorily perform the duties of his or her position. Probationary and
154 permanent state employees shall be eligible for a medical leave of absence without pay for the
155 period of time during which he or she is receiving temporary total disability benefits for a personal
156 injury that occurred in the course of and resulting from state employment.

157 (13) For such other rules and administrative regulations, not inconsistent with this article,
158 as may be proper and necessary for its enforcement.

159 (14) The board shall review and approve by rules the establishment of all classified-
160 exempt positions to assure consistent interpretation of the provisions of this article.

161 The provisions of this section are subject to any modifications contained in chapter five-f
162 of this code. The ~~board~~ division may include in the rules provided for in this article such provisions
163 as are necessary to conform to regulations and standards of any federal agency governing the
164 receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary
165 notwithstanding. The board and the director shall see that rules and practices meeting such
166 standards are in effect continuously after the effective date of this article.

§29-6-10a. Reduction in work force.

1 [Repealed.]

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

1 All officers and employees of the state and affiliated agencies shall comply with and aid in
2 all proper ways in carrying out the provisions of this article and the rules and orders thereunder.
3 All officers and employees shall furnish any records or information which the director may request
4 for any purpose of this article. The director may institute and maintain any action or proceeding
5 at law or in equity that he or she considers necessary or appropriate to secure compliance with
6 this article and the rules and orders thereunder.

§29-6-14. Certification of payrolls; wrongfully withholding certification of payroll.

1 [Repealed.]

§29-6-16. Records of division.

1 The records of the division, except such records as the rules may properly require to be
2 held confidential for reasons of public policy, shall be public records and shall be open to public
3 inspection, subject to reasonable regulations as to the time and manner of inspection which may
4 be prescribed by the director. Employee and applicant information which the director may deem
5 confidential shall be maintained under strictest confidentiality and released only upon proper
6 written authorization of the applicant or employee, or by order of a court of competent jurisdiction.

§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.

1 (a) Subject to the approval of the board the director may enter into agreements with any
2 municipality or other political subdivision of the state to furnish services and facilities of the division
3 to such municipality or political subdivision in the administration of its personnel on merit
4 principles. Any such agreements shall provide for the reimbursement to the state of the
5 reasonable cost of the services and facilities furnished, as determined by the director. All
6 municipalities and political subdivisions of the state are hereby authorized to enter into such
7 agreements. Subject to the approval of the board, the director may enter into an agreement with
8 ~~the state department of health~~ Secretary of the Department of Health and Human Resources for
9 the inclusion of personnel of local health departments ~~under~~ into the classified service Division of
10 Personnel merit system established by this article.

11 (b) The director may cooperate with governmental agencies for other jurisdictions charged
12 with personnel administration in conducting joint tests and establishing joint lists from which
13 ~~eligibles~~ eligible candidates shall be certified for appointment in accordance with the provisions
14 of this article.

§29-6-19. Refusal to testify.

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

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations, or race; political activities prohibited.

1 (a) No person shall be appointed or promoted to or demoted or dismissed from any
2 position in the classified service or in any way favored or discriminated against with respect to
3 such employment because of his or her political or religious opinions or affiliations or race; but
4 nothing herein shall be construed as precluding the dismissal of any employee who may be
5 engaged in subversive activities or found disloyal to the nation.

6 (b) No person shall seek or attempt to use any political endorsement in connection with
7 any appointment in the classified service.

8 (c) No person shall use or promise to use, directly or indirectly, any official authority or
9 influence, whether possessed or anticipated, to secure or attempt to secure for any person an
10 appointment or advantage in appointment to a position in the classified service, or an increase in
11 pay or other advantage in employment in any such position, for the purpose of influencing the
12 vote or political action of any person or for any consideration.

13 (d) No employee in the classified service or member of the board or the director shall,
14 directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform
15 any service for any political party, committee or candidate for compensation, other than for
16 expenses actually incurred, or in any manner take part in soliciting any such assessment,
17 subscription, contribution or service of any employee in the classified service.

18 (e) Notwithstanding any other provision of this code, no employee in the classified service
19 shall:

20 (1) Use his or her official authority or influence for the purpose of interfering with or
21 affecting the result of an election or a nomination for office;

22 (2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local
23 officer or employee to pay, lend or contribute anything of value to a party, committee, organization,
24 agency or person for political purposes; or

25 (3) Be a candidate for any national or state paid public office or court of record, even if
26 declining compensation; or hold any paid public office other than as a paid poll clerk or worker,
27 even if declining compensation; or be a member of any national, state or local committee of a
28 political party, or a financial agent or treasurer within the meaning of the provisions of §3-8-3, §3-
29 8-4, or §3-8-5e of this code. Other types of partisan or nonpartisan political campaigning and
30 management not inconsistent with the provisions of this subdivision and with the provisions of
31 subsection (d) of this section shall be permitted.

32 (f) Political participation pertaining to Constitutional amendments, referendums, approval
33 of municipal ordinances or activities, serving as a poll clerk or worker or being a candidate for or
34 serving as a delegate to any state or national political party convention shall not be deemed to be
35 prohibited by the foregoing provisions of this section.

36 (g) Any classified employee who becomes a candidate for any paid public office as
37 permitted by this section shall be placed on a leave of absence without pay for the period of such
38 candidacy, commencing upon the filing of the certificate of candidacy.

§29-6-21. Acts prohibited.

1 (a) No person shall make any false statement, certificate, mark, rating, or report ~~with~~
2 ~~regard to~~ regarding any test, certification, or appointment made under any provisions of this article
3 or in any manner commit or attempt to commit any fraud preventing the impartial execution of this
4 article ~~and~~ or the division's rules.

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

9 (c) No employee of the division, examiner, or other person shall defeat, deceive or obstruct
10 any person in his or her right to examination, eligibility, certification, or appointment under this

11 article, or furnish to any person any special or secret information for the purpose of affecting the
12 rights or prospects of any person with respect to employment in the classified service.

§29-6-22. Penalties.

1 (a) Any person who willfully violates any provision of this article or of the rules shall be
2 guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more
3 than \$500, or imprisoned in the jail for a period not to exceed one year, or both fined and
4 imprisoned. Jurisdiction under this section shall be in a court of record exercising criminal
5 jurisdiction within the county wherein the offense is committed.

6 (b) Any person who is convicted of a misdemeanor under this article shall, for a period of
7 five years, be ineligible for appointment to or employment in a position in the classified or
8 classified-exempt service, and if he or she is an officer or employee of the state, shall forfeit his
9 or her present office or position.

**§29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants
or contribution; disbursements.**

1 For the operation of the division, there is hereby created in the State Treasury a special
2 revolving fund to be known and designated as the Division of Personnel Fund. This fund shall
3 consist of appropriations made by the Legislature, ~~funds transferred in accordance with the~~
4 ~~provisions of section nine of this article~~ funds received for personnel services rendered to other
5 agencies, departments, divisions and units of state and local government, and funds received by
6 grant or contribution from the federal government or any other entity which funds the division is
7 hereby authorized to receive. ~~Provided, That for fiscal year one thousand nine hundred ninety all~~
8 ~~funds remaining in account numbers 5840-00, 5840-35 and 5840-17 shall be transferred to the~~
9 ~~Division of Personnel fund on the effective date of this article~~ Each agency, department, division
10 or unit of state or local government served by the ~~Division of Personnel~~ division is hereby
11 authorized and directed to transmit to the division for deposit in said special fund the charges
12 made by the ~~Division of Personnel~~ division for personnel services rendered, such charges to be

13 those fixed in a schedule or schedules prepared by the director and approved by the ~~secretary~~
14 Secretary of the Department of Administration. Disbursements from the fund shall be made in
15 accordance with an approved expenditure schedule as provided by §5A-2-1 *et seq.* of this code
16 and shall be made under the direct supervision of the director.

17 The director shall maintain accurate records reflecting the cost of administering the
18 provisions of this article.

§29-6-24. Posting of job openings.

1 (a) Whenever a job opening occurs within the classified service, the appointing authority
2 shall, in addition to any other requirement of law or regulation for the posting of job opening
3 notices, at least ~~ten~~ seven calendar days before making an appointment to fill the job opening,
4 post a notice within the building or facility where the duties of the job will be performed and
5 throughout the agency, which notice states that a job opening has occurred and describes the
6 duties to be performed by a person employed in that position.

7 (b) If an individual selected for a posted vacancy within the first ~~ten work~~ 30 calendar days
8 of employment: (1) Refuses the offer of employment; (2) fails to report to work; or (3) resigns or
9 otherwise separates from employment, the appointing authority is not required to repost the
10 vacancy prior to another appointment to the position if the appointment is made within ~~thirty~~ 60
11 calendar days of the effective date of the previous appointment and the selection is made from
12 the pool of eligible applicants from which the first employee was hired.

§29-6-25. Implementation; report to Governor and Legislature.

1 [Repealed.]

§29-6-27. Leave donation program.

1 The ~~Division of Personnel after consultation with other state agencies shall establish~~
2 division through legislative rule shall provide for a program under which annual leave accrued or
3 accumulated by an employee of an agency may, if voluntarily agreed to by the employee, be
4 ~~transferred to the annual leave account of~~ donated to another designated employee if the other

5 employee ~~requires additional~~ has exhausted his or her leave because of a medical emergency:
6 ~~The annual leave program shall be established by legislative rule pursuant to the provisions of~~
7 ~~chapter twenty nine a of this code. The Division of Personnel shall file such legislative rule no~~
8 ~~later than July 15, 1995. The division shall prepare an annual status report to be presented to the~~
9 ~~Joint Committee on Government and Finance no later than January 5, each year. A “medical~~
10 ~~emergency” means a medical condition of an employee or a family member of the employee that~~
11 ~~is likely to require the prolonged absence of the employee from duty and which will result in a~~
12 ~~substantial loss of income to the employee because of the unavailability of paid leave. As used in~~
13 ~~this section, “employee” includes employees in the classified and classified exempt service and~~
14 ~~employees exempt from coverage who are under this article entitled to annual leave as a benefit~~
15 ~~of employment~~ *Provided*, That none of the leave so transferred may be used to qualify for or add
16 to service for any retirement system administered by the State of West Virginia.