

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 709

FISCAL
NOTE

BY SENATOR LINDSAY

[Introduced February 21, 2022; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §5-5-7; relating to authorizing the Secretary of the Department of Health and
 3 Human Resources to designate positions as critical needs; creating a Critical Needs
 4 Position Fund; authorizing salary supplement to critical needs positions; specifying
 5 authorized expenditures; granting authority to promulgate necessary rules; and requiring
 6 an annual report on the effectiveness of supplementing salaries and filling vacancies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-7. Department of Health and Human Resources critical needs designation and salary adjustment.

1 (a) The Legislature finds that the Department of Health and Human Resources has
 2 extreme difficulty in recruiting and retaining child protective service workers and other essential
 3 personnel who assist in the investigation and protection of the children of this state.

4 The Legislature further finds that vacancies in critical needs positions within the
 5 Department of Health and Human Resources severely impairs its ability to perform its vital
 6 functions and responsibilities and further burdens existing critical personnel.

7 (b) Definitions.

8 (1) "Critical needs position" means a job, position, or classification designated by the
 9 Secretary of the Department of Health and Human Resources as vitally important due to its
 10 importance, vacancy or retention rate, or any other reason which impairs the ability of the
 11 department to perform its duties and responsibilities.

12 (2) "Secretary" means the Secretary of the Department of Health and Human Resources.

13 (c) The Critical Needs Position Fund is hereby created in the State Treasury. The fund
 14 shall be administered by the secretary and shall consist of all moneys made available for the
 15 purposes of this article from any source, including, but not limited to, all gifts, grants, bequests or
 16 transfers from any source, any moneys that may be appropriated to the fund by the Legislature.

17 and all interest or other return earned from investment of the fund. Expenditures from the fund
18 shall be for the purposes set forth in subsection (d) of this section and are not authorized from
19 collections but are to be made only in accordance with appropriation by the Legislature and in
20 accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the
21 provisions set forth in §11B-2-1 et seq. of this code: *Provided*, That for the fiscal year ending June
22 30, 2023, expenditures are authorized from collections rather than pursuant to an explicit
23 appropriation by the Legislature. Any balance, including accrued interest and other returns,
24 remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund
25 but shall remain in the fund and be expended as provided by this section.

26 (d) Moneys of the Critical Needs Position Fund may only be expended to provide salary
27 adjustments to critical needs positions. This adjustment is separate from and in addition to any
28 other salary adjustment approved during the 2022 regular session of the Legislature relative to
29 the 2023 budget. In the event any provision of this section conflicts with any rule, policy, or
30 provision of this code, the provisions of this section control. Due to the limits of funding, the results
31 of the salary adjustments shall not be subject to the provisions of § 6C-2-1 et seq. of this code. It
32 is the specific intent of the Legislature that no private cause of action, either express or implied,
33 shall arise pursuant to the provisions or implementation of this section.

34 (e) Notwithstanding any provision or rule to the contrary, the secretary may designate any
35 job, classification, or position as a critical needs position due to its importance, vacancy or
36 retention rate, or any other reason which impairs the ability of the department to perform its duties
37 and responsibilities and provide these critical needs positions a uniform salary supplement not to
38 exceed 10 percent of the classification and compensation set forth by the West Virginia Division
39 of Personnel.

40 (f) The secretary may propose rules for legislative approval in accordance with the
41 provisions of §29A-3-1 et seq. of this code and may promulgate emergency rules pursuant to the
42 provisions of §29A-3-15 of this code to implement the provisions of this section.

43 (g) Any salary adjustments provided by this section are not exempt from the provisions of
44 this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the
45 employment process.

46 (h) The secretary shall provide an annual report to the Legislature including, but not limited
47 to, how these funds have been expended, positions which have been designated a critical needs
48 position, and any change in recruitment or retention of these critical needs positions.

NOTE: The purpose of this bill is to establish a Critical Needs Fund, allow the Secretary of DHHR to designate certain critical and vacant positions as critical needs, and permit a uniform salary supplement to those critical needs positions.

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