

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 814

By Senator Woodrum

[Introduced on February 16, 2024; referred
to the Committee on Government Organization]

1 A BILL to repeal §29-6-9, §29-6-10a, §29-6-14, and §29-6-25 of the Code of West Virginia, 1931,
 2 as amended; and to amend and reenact §29-6-1, §29-6-2, §29-6-3, §29-6-4, §29-6-5, §29-
 3 6-6, §29-6-7, §29-6-8, §29-6-10, §29-6-12, §29-6-16, §29-6-17, §29-6-19, §29-6-20, §29-
 4 6-21, §29-6-22, §29-6-23, §29-6-24, and §29-6-27 of said code, all relating to the state
 5 employee merit system; defining terms; allowing additions to classified service; providing
 6 exemptions to classified service; providing make-up and duties of the State Personnel
 7 Board; defining a quorum; providing authority of Director of Personnel; providing
 8 rulemaking for the Division of Personnel; authorizing the director to adjust pay grades;
 9 providing process for appointment, promotion, or reinstatement from lists of candidates;
 10 allowing for pilot projects; providing process for dismissal; confidentiality of records;
 11 allowing local political subdivisions to participate in the classified service system; providing
 12 penalties; providing time frames for job postings and appointments; and allowing for a
 13 leave donation program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CIVIL SERVICE DIVISION OF PERSONNEL MERIT 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 on
 3 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 of~~
 8 regents, Higher Education Policy Commission, Council for Community and Technical Education,
 9 and higher education governing boards are included in a classification plan known as classified-
 10 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, transferred
10 to or incorporated in one of the departments created in §5F-1-2 of this code, as well as any
11 affiliated county or municipal agency: *Provided*, That individual districts, offices, regions, sections
12 and units within the same agency, however designated, shall not be considered a separate
13 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 ~~an employee whose position satisfies those~~
29 positions which satisfy the definitions for "class" and "classify" but ~~who is~~ which are not covered
30 under the ~~civil service~~ Division of Personnel merit system or employed by the ~~higher education~~
31 ~~governing boards~~ Higher Education Policy Commission, Council for Community and Technical
32 College Education, or higher education governing boards, as defined in §18B-1-2 of this code;

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

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

40 (k) "Department" means the departments of the executive branch of state government
41 provided in §5F-1-2 of this code;

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

44 (k) ~~(m)~~ "Division" means the Division of Personnel ~~herein created;~~

45 (n) "Exempt service" means all positions specifically exempted from the classified service
46 by statute;

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

51 (m) ~~(p)~~ "Position" means ~~a particular job which has been classified based on specifications~~

52 an authorized and identified group of duties and responsibilities assigned by the proper authority
53 requiring the full-time or part-time employment of at least one person;

54 (n) (q) "Secretary" means the Secretary of the Department of Administration created in
55 §5F-1-2 of this code;

56 (o) "Specification" means a description of a class of position which defines the class,
57 provides examples of work performed and the minimum qualifications required for employment;

58 (p) (r) "Veteran" means any person who has served in the armed forces of the United
59 States of America during World War I (April 6, 1917–November 11, 1918), World War II
60 (December 7, 1941–December 31, 1946), the Korean Conflict (June 27, 1950–January 31, 1955),
61 the Vietnam Conflict (August 5, 1964–May 7, 1975) or in a campaign, expedition or conflict for
62 which a campaign badge has been authorized and received by such person and who has received
63 a discharge under honorable conditions from such service meets the requirements of §6-13-1 of
64 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 director and the appointing authority concerned, add to the
6 list of positions in the classified service, but such additions shall not include any positions
7 specifically 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 after~~
4 ~~the second Wednesday of the following January and except for the same periods commencing in~~

5 ~~the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the~~
6 ~~written consent of the State Personnel Board and the appointing authority concerned, add to the~~
7 ~~list of positions in the classified service, but the additions may not include any positions specifically~~
8 ~~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~~ agencies appointed
17 by the Governor or heads of ~~departments~~ agencies selected by commissions or boards when
18 expressly exempt 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 an~~
21 ~~agency elected or appointed by the Governor or Legislature are classified-exempt, unless~~
22 ~~specifically exempted by statute;~~

23 (7) All policy-making positions, which includes newly hired Deputy Commissioners within
24 the Department of Health and Department of Human Services Resources, are classified-exempt,
25 unless specifically exempted by statute;

26 ~~(8) Patients or inmates employed in state institutions;~~

27 ~~(9) (8) Persons employed in a professional or scientific capacity to make or conduct a~~
28 ~~temporary and special inquiry, investigation, or examination on behalf of the Legislature or a~~
29 ~~committee thereof, an executive a department, affiliated county or municipal agency or by~~
30 ~~authority of the Governor are exempt;~~

31 ~~(10)~~ (9) All employees of the office of the Governor, including all employees assigned to the
32 executive mansion are exempt;

33 ~~(11)~~ (10) Part-time professional personnel engaged in professional services without
34 administrative duties are classified-exempt;

35 ~~(12)~~ (11) Temporary employees are exempt;

36 ~~(13)~~ (12) Members and employees of the board of trustees and board of directors or their
37 successor agencies are exempt;

38 ~~(14)~~ (13) Uniformed personnel of the State Police are exempt;

39 ~~(15)~~ (14) Temporary employees in state forests, parks, and recreational areas are exempt;

40 and,

41 ~~(16)~~ (15) Any person hired as an attorney beginning July 1, 2022, is classified-exempt.

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

54 ~~(e) All county road supervisor positions are covered under the classified service effective~~
55 ~~July 1, 1999. A person employed as a county road supervisor on the effective date of this section,~~
56 ~~is not required to take or pass a qualifying or competitive examination upon or as a condition of~~

57 ~~becoming a classified service employee. All county road supervisors who become classified~~
 58 ~~service employees pursuant to this subsection who are severed, removed, or terminated in his or~~
 59 ~~her employment must be severed, removed or terminated as if the person was a classified service~~
 60 ~~employee.~~

§29-6-5. Division of Personnel continued; functions.

- 1 (a) The Division of Personnel is continued within the Department of Administration.
- 2 (b) The Division of Personnel shall perform the following functions:
- 3 ~~(1) Evaluating applicants for appointment or promotion to positions in the classified~~
 4 ~~service;~~
- 5 ~~(2)~~(1) Establishing and applying a system of classification for positions in the classified and
 6 classified-exempt service;
- 7 ~~(3)~~(2) Establishing and applying a system of compensation for positions in the classified
 8 service;
- 9 ~~(4)~~(3) Establishing and maintaining records of employment for classified employees;
- 10 ~~(5)~~(4) Advising appointing authorities and supervisory personnel regarding disciplinary
 11 matters, the provisions of this article, rules implementing the provisions of this article, and laws
 12 and rules affecting human resource management;
- 13 ~~(6)~~(5) Providing training in human resource management and the operation of the state
 14 personnel system;
- 15 ~~(7)~~(6) Assuring compliance with this article and rules implementing the provisions of this
 16 article; and
- 17 ~~(8)~~(7) Other functions necessary to the establishment of a system of personnel
 18 administration as provided in this article.

§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 comprised 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~~ chair of the board. The ~~Board~~ board shall meet as necessary at the time and place specified
18 by the call of the ~~Chair~~ chair. ~~At least one meeting shall be held in each month.~~ All meetings shall
19 be open to the public. Notice of each meeting shall be given in writing to each member by the
20 ~~Director~~ director at least three days in advance of the meeting period.

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

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

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

26 ~~(3) (2) Authorize and conduct~~ Conduct or recommend the director conduct any studies,
27 inquiries, investigations, or hearings in the operation of this article it considers necessary.

28 (f) The ~~Director~~ director or the board may subpoena and require the attendance of
29 witnesses in the production of evidence or documents relevant to any proceeding under this
30 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. The
2 director shall be a person knowledgeable of the application of the merit principles in public
3 employment as evidenced by the obtainment of a degree in business administration, personnel
4 administration, public administration or the equivalent or at least five years of administrative
5 experience. The salary for the director shall be that which is set out in §6-7-2a of this code.

6 (b) The director shall:

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

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

11 (3) ~~Supervise payrolls and audit payrolls, reports or transactions for conformity with the~~
12 ~~provisions of this article;~~

13 (4)(3) Plan, evaluate, administer, and implement personnel programs and policies in state
14 government and to political subdivisions after agreement by the parties;

15 (5)(4) ~~Supervise~~ Prescribe and provide training and consultation to appointing authorities
16 regarding the employee selection process and employ performance evaluation procedures;

17 (6)(5) Develop programs to improve efficiency and effectiveness of the public service,
18 including, but not limited to, employee training, development, assistance, and incentives, which,
19 notwithstanding any provision of this code to the contrary, may include a ~~one-time~~ monetary
20 incentive incentives for recruitment and retention of employees in critically understaffed
21 classifications. The director, in consultation with the board, shall determine which classifications
22 are critically understaffed. The one-time monetary incentive program shall continue until June 30,

23 ~~2009. The director shall report annually on or before December 31, commencing in the year 2007,~~
24 ~~to the Joint Committee on Government and Finance. The annual report shall provide all relevant~~
25 ~~information on the one-time monetary incentive program and the understaffed classifications in~~
26 ~~state agencies;~~

27 ~~(7)(6) Establish pilot programs and other projects for a maximum of one year outside of the~~
28 ~~provisions of this article, subject to approval by the board, to be included in the annual report;~~

29 ~~(8) Establish and provide for a public employee interchange program and may provide for a~~
30 ~~voluntary employee interchange program between public and private sector employees Provide~~
31 ~~consultation to appointing authorities regarding application of the classification and compensation~~
32 ~~plans;~~

33 ~~(9)(7) Establish an internship program;~~

34 ~~(10)(8) Assist the Governor and Secretary of the Department of Administration in general~~
35 ~~workforce planning and other personnel matters;~~

36 ~~(11)(9) Make an annual report to the Governor and Legislature and all other special or~~
37 ~~periodic reports as may be required;~~

38 ~~(12)(10) Assess cost for special or other services;~~

39 ~~(13)(11) Recommend Propose rules to the board for implementation and administration of~~
40 ~~this article and interpret division statute, rule, and policy; and~~

41 ~~(14)(12) Conduct schools, seminars or classes for supervisory employees of the state~~
42 ~~regarding handling of complaints and disciplinary matters and the operation of the state personnel~~
43 ~~system Improve the effectiveness and efficiency of state government through the development of~~
44 ~~a skilled workforce by providing: an extensive offering of classroom and online training programs~~
45 ~~for employees and managers; coaching services to improve the performance of employees,~~
46 ~~managers, and executives; and consulting to foster higher competency in critical managerial~~
47 ~~functions, ensure that public funds are expended judiciously, and promotes respectful and~~
48 ~~satisfying customer service.~~

§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 Conduct or recommend the director conduct any investigation which it may
9 consider desirable concerning the administration of personnel in the classified service and make
10 recommendations to the director with respect 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.~~

§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 for
4 all positions in the classified ~~service~~ and a position classification plan for all positions in the and
5 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~~ director, ~~the director~~ each appointing authority, in consultation with the
14 division, shall allocate the every position of ~~every~~ employee in the classified service to one of the
15 ~~classes in the classified plan and the position of every employee in the~~ and classified-exempt
16 service to one of the ~~positions in the classified-exempt~~ classifications in their respective plan:
17 Provided, That an appointing authority may submit for approval of the director an alternative
18 classification plan for his or her department. Any amendments to the department classification
19 plan must be submitted to the director for approval. Any employee affected by the allocation of a
20 position to a class shall, after filing with the director of personnel a written request for
21 reconsideration thereof in such manner and form as the director may prescribe, be given a
22 reasonable opportunity to be heard thereon by the director. The interested appointing authority
23 shall be given like opportunity to be heard.

24 (2) For preparation, maintenance, and revision of a pay plan for all employees in the
25 classified service, after consultation with appointing authorities and the state fiscal officers, and
26 after a public hearing held by the ~~board~~ director. Such pay plan shall become effective only after it
27 ~~has been approved by the Governor after submission to him by the board~~ approval by the
28 Governor. Amendments to the pay plan may be made in the same manner: Provided, The pay
29 plan shall be reviewed annually and adjusted as necessary: Provided, however, That the
30 minimum and maximum rates established in the pay plan shall be automatically adjusted by an
31 amount equivalent to 50 percent of each across-the-board raise authorized by the Legislature.
32 Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in
33 which he or she is employed: Provided further, That an appointing authority may submit for
34 approval of the director an alternative pay plan for his or her department. Any amendments to the

35 department pay plan must be submitted to the director for approval. The principle of equal pay for
36 equal work in the several agencies of the state government shall be followed in the pay plan as
37 established hereby. The Governor or his or her designee shall have authority to restrict the
38 provisions of the pay plan as necessitated by fiscal constraints.

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

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. In the event that the agency wishes to lay off a more senior employee,
77 the agency must demonstrate that the senior employee cannot perform ~~any other~~ the job duties of
78 a position held by less senior employees within that agency in the job class or any other equivalent
79 or lower job class for which the senior employee is qualified: *Provided*, That if an employee refuses
80 to accept a position in a lower job class, such employee shall retain all rights of recall as
81 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 is
86 less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class

87 in the series until all eligible employees on layoff are given the opportunity to refuse that job class.
88 An employee shall be recalled ~~ent~~ into 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 of
91 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 of~~
93 ~~section seven, article two, chapter five b of this code,~~ when filling vacancies at state agencies the
94 ~~directors of state agencies~~ the appointing authority shall, for a period of ~~twelve~~ 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 who
98 were permanently employed immediately prior to their layoff shall not supersede the recall rights of
99 employees who have been laid off in such agency or facility.

100 (7) For the establishment of ~~eligible~~ lists of candidates for appointment and promotion
101 within the classified service ranked in order based upon their examination score or review, ~~upon~~
102 ~~which lists shall be placed the names of successful candidates in the order of their relative~~
103 ~~excellence in the respective examinations.~~ Eligibility 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~~ twenty 20 names on the appropriate lists of ~~eligibles~~ eligible candidates, or may choose
106 any person scoring at or above the ~~ninetieth~~ eightieth 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 suspensions, demotions, discharges dismissals and transfers. The division shall have
129 access to performance and disciplinary records of all Executive Branch employees and serve as a
130 central clearinghouse pertaining to employment eligibility for positions in state service.

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

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

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

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

163 The provisions of this section are subject to any modifications contained in chapter five-f of
164 this code. The ~~board~~ division may include in the rules provided for in this article such provisions as

165 are necessary to conform to regulations and standards of any federal agency governing the
 166 receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary
 167 notwithstanding. ~~The board and the~~ director shall see that rules and practices meeting such
 168 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. All
 3 officers and employees shall furnish any records or information which the director may request for
 4 any purpose of this article. The director may institute and maintain any action or proceeding at law
 5 or in equity that he or she considers necessary or appropriate to secure compliance with this
 6 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~~ The director may enter into agreements with

2 any municipality or other political subdivision of the state to furnish services and facilities of the
 3 division 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~~ The director may enter into an agreement
 8 with the ~~state department of health~~ Secretary of the Department of Health for the inclusion of
 9 personnel of local health departments ~~under~~ into the ~~classified-service~~ Division of Personnel merit
 10 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 of
 14 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 of
 5 ~~the state~~ or the conduct of any state officer or employee on the ground that his or her testimony or
 6 answers would tend to incriminate him or her, or ~~shall refuse~~ refuses to accept a grant of immunity
 7 from prosecution ~~on account of any matter about which he may be asked to testify at any such~~
 8 ~~hearing or inquiry~~, he or she shall forfeit his or her office or position and shall not be eligible
 9 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 or state.

6 (b) No person shall seek or attempt to use any political endorsement in connection with any
7 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 vote
12 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 section
29 three, four or five-e, article eight, chapter three of this code. Other types of partisan or nonpartisan
30 political campaigning and management not inconsistent with the provisions of this subdivision and
31 with the provisions of 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 ~~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 the
8 classified service.

9 (c) No employee of the division, examiner, or other person shall defeat, deceive, or
10 obstruct any person in his or her right to examination, eligibility, certification, or appointment under
11 this article, or furnish to any person any special or secret information for the purpose of affecting
12 the 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 county 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 or
 9 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.

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 later~~
8 ~~than July 15, 1995. The division shall prepare an annual status report to be presented to the Joint~~
9 ~~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 is~~
11 ~~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 of~~
15 ~~employment: *Provided*, That none of the leave so transferred may be used to qualify for or add to~~
16 ~~service for any retirement system administered by the State of West Virginia.~~

NOTE: The purpose of this bill is to streamline and simplify the processes within the classified service system; maintaining a merit system while creating efficiencies and flexibility. The bill empowers appointing authorities to make decisions regarding human capital management based on ethical and professional standards that inspire excellence with the Division of Personnel as a strategic business partner in developing policy and practices that make the State of West Virginia a model employer. The bill changes the quorum required for State Personnel Board meetings and defines the roles of the board and the Director of the Division of Personnel. The bill allows the director to establish pilot programs within state agencies to address specific recruitment and retention issues within a particular agency. The bill authorizes the director to approve classification and pay plans established by the division and those proposed by appointing authorities to address the specific needs of their agencies. The bill changes the number of days a job posting must be posted and clarifies the leave donation program. The bill establishes the Division of Personnel as a central clearinghouse pertaining to employment eligibility for positions in state service.

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