

WEST VIRGINIA CODE: §5F-2-2

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of section seven of this article;

(5) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;

(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by the Governor and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the state Road Fund transferred to the office of the Secretary of the Department of Transportation is not a use other than the purpose for which the funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the funds formerly appropriated to the agency, board or function in order to implement consolidation. The authority to transfer funds under this section shall expire on June 30, 2010;

(8) Enter into contracts or agreements requiring the expenditure of public funds and authorize the expenditure or obligation of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make

expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department under this chapter;

(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall be exercised in accordance with the provisions of articles three, ten and eleven, chapter five-a of this code: Provided, however, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter twenty-nine-a of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in section two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(14) Delegate to administrators the duties of the secretary as the secretary may deem appropriate, from time to time, to facilitate execution of the powers, authority and duties delegated to the secretary; and

(15) Take any other action involving or relating to internal management not otherwise prohibited by law.

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction and restriction of the state's vehicle or other transportation fleet;

(2) The elimination, reduction and restriction of state government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any program.

(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections (5) and (6), section ten, article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over programs which have an impact on the delivery of health care services in the state or are payors for health care services or are payors for prescription drugs, including, but not limited to, the Public Employees Insurance Agency, the Department of Health and Human Resources, the Bureau of Senior Services, the Children's Health Insurance Program, the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state colleges and universities, public hospitals, state or local institutions including nursing homes and veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau for Medical Services and other programs, which have an impact on the delivery of health care services or are payors for health care services or are payors for prescription drugs, in West Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning established pursuant to article twenty-nine-h, chapter sixteen of this code for the purpose of improving the health care delivery services in West Virginia for any program over which they have authority.