
WEST VIRGINIA CODE CHAPTER 5F

WV Legislature

§5F-1-1. Legislative findings and declarations.

(a) The Legislature hereby finds and declares that state government must be made more responsive to the citizens of the state; that the various agencies and boards responsible for the execution of the laws of this state must be improved; that more effective management of the executive branch of state government must be achieved; that the efficiency of the operations of the agencies and boards of state government must be increased; and that in view of the financial crisis facing the State of West Virginia, it is essential to compel a curtailment and reduction of governmental expenses and hold them within reasonable bounds consistent with the economical and efficient administration of governmental services and to ensure the strictest economy in the matter of governmental expenditures to the end that agencies and boards of government may not be compelled to abdicate their responsibilities or cease to function but that in carrying out their responsibilities they shall not place upon the public any expense which is not necessary. The Legislature further hereby finds and declares that in order to achieve these purposes, it is essential to reorganize the executive branch of state government so as to:

- (1) Promote the execution of the laws, the more effective management of the executive branch and of its agencies, boards and functions, and the expeditious administration of the public business;
- (2) Reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government;
- (3) Increase the efficiency of the operations of state government to the fullest extent practicable;
- (4) Group, coordinate and consolidate agencies and functions of state government, as nearly as may be, according to purposes;
- (5) Consolidate or combine those agencies having similar or complementary functions under a single head, and, after observing and analyzing the operation of such consolidated or combined agencies for a period of time, abolish by legislative act, where legislative action is required, such agencies or functions thereof as are determined not to be necessary or desirable for the efficient conduct of the state government;
- (6) Eliminate duplication of effort;
- (7) Provide for appropriate Legislative Oversight as mandated in the Constitution of this state; and
- (8) Provide for a spirit of cooperation and unity between the executive and legislative branches in addressing and developing solutions to the problems facing the state.

(b) This chapter is enacted in view and because of the findings and declarations set forth in subsection (a) of this section and shall be construed in the light thereof.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

- (1) Department of Administration;
- (2) Department of Environmental Protection;
- (3) Department of Health;
- (4) Department of Homeland Security;
- (5) Department of Revenue;
- (6) Department of Transportation;
- (7) Department of Commerce;
- (8) Department of Veterans' Assistance;
- (9) Department of Tourism;
- (10) Department of Human Services; and
- (11) Department of Health Facilities.

(b) Each department will be headed by a secretary appointed by the Governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

§5F-1-3. Oath; bond; compensation.

(a) Each person appointed to serve as a secretary shall take the oath or affirmation prescribed by section five, article four of the Constitution, and the oath shall be certified by the person who administers the same and filed in the office of the Secretary of State.

(b) Each person appointed shall give bond in the penalty of \$25,000 conditioned for the faithful performance of the duties of the office. The bond shall be approved by the Attorney General as to form and by the Governor as to sufficiency. The surety of the bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of the department.

§5F-1-3a. Executive compensation commission.

[Repealed.]

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§5F-1-4. Definitions.

(a) As used in this chapter, unless the context clearly requires a different meaning:

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

(2) "Agency" means any department, division, fund, office, position, system, survey or other entity of state government, however designated, transferred to and incorporated in one of the departments created in section two of this article;

(3) "Board" means any board, commission, authority, council, or other body, however designated, consisting of two or more members, transferred to and incorporated in one of the departments created in section two of this article;

(4) "Code" means the Code of West Virginia, 1931, as heretofore and hereafter amended; and

(5) "Secretary" means the administrative head of one of the departments created in section two of this article.

(b) Although each term defined in subsection (a) of this section is in the singular, the plural of any term shall have the same meaning.

§5F-1-5. Online state phone directory.

(a) Each agency listed in the online state phone directory shall update the employee information in the directory, as required by this section, or provide the Office of Technology the following information, unless it is determined by the submitting agency that publishing such information could cause safety concerns to the employee, reveal sensitive information that should not be provided to the public at large, or is detrimental to the service operations of the agency:

- (1) Employee name and job title;
- (2) Office location and mailing address, including name of city and zip code;
- (3) Office telephone number, including extension;
- (4) Electronic mail address; and
- (5) Mobile telephone number, if used as referred to in §5F-1-5(e) of this code.

(b) The agency shall provide the Office of Technology written justification if the agency does not wish to provide the required information pursuant to §5F-1-5(a) of this code.

(c) Each agency listed in the online state phone directory shall update the online state phone directory information within 30 days after personnel action or event that would require the agency to add, modify, or delete information from the directory, or the agency shall provide that information to the Office of Technology.

(d) The Office of Technology shall, within 30 days of receipt of updated employee information from an agency, make the requested changes to the online state phone directory.

(e) Beginning with the effective date of this amendment, each agency listed in the online state phone directory shall update the employee information in the directory to include the information required in §5F-1-5(a) of this code for any official or employee who either has a mobile telephone furnished by his or her employer, or uses his or her private mobile telephone during his or her employment with the state and the service is paid by the employer: *Provided*, That this information shall also be listed on the website of each agency.

§5F-1-6. House Bill 4006 amendments effective date.

[Repealed.]

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§5F-1-7. Website content and required information.

Beginning December 31, 2020, each agency shall maintain a website that provides the following information in a searchable form by the public, if applicable:

- (1) The office contact information, including office location and mailing address, telephone number, facsimile number, office hours, and a secure electronic means of contacting the office such as a contact portal or other interface;
- (2) The contact information of each administrative agency official, including office location and mailing address, office telephone number, facsimile number, and an organizational electronic mail address: *Provided*, That the agency may withhold contact information of its staff members from disclosure that it deems necessary to protect their safety, the safety of their coworkers, and the integrity of law-enforcement operations;
- (3) Organizational chart;
- (4) A list of governing statutes and legislative and procedural rules;
- (5) Meeting minutes;
- (6) Annual reports;
- (7) Frequently asked questions and descriptive answers;
- (8) Available state grant opportunities to include, but not be limited to:
 - (A) Available grant information and application information;
 - (B) Grant eligibility requirements; and
 - (C) Award ranges and award deadlines; and
- (9) State grants that are awarded in an amount greater than \$20,000 to include, but not be limited to:
 - (A) The name and address of the grantee's organization;
 - (B) The purpose of the award;
 - (C) The amount of the award;
 - (D) The effective date and duration of the award; and
 - (E) Any financial and performance reports that are required by the State of West Virginia.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

- (1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;
- (2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;
- (3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;
- (4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this code;
- (5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;
- (6) Boundary Commission provided in §29-23-1 *et seq.* of this code;
- (7) Public Defender Services provided in §29-21-1 *et seq.* of this code;
- (8) Division of Personnel provided in §29-6-1 *et seq.* of this code;
- (9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;
- (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and
- (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

- (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes the Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.
- (2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The Board of Coal Mine Health and Safety and the Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor.
- (3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;
- (4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;
- (5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development;

(D) Division of Research, Information and Analysis;

(7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code; and

(8) Division of Economic Development provided in §5B-2-1 *et seq.* of this code, which includes:

(A) Office of Broadband provided for in 31G-1A-1 *et seq.*;

(B) Small Business Development Center provided for in §12-1A-1 *et seq.*; and

(C) The Office of Energy provided for in §5B-2F-2 of this code.

(c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Commission provided in §10-5-1 *et seq.* of this code is continued as a separate agency within the Department of Tourism, which shall provide administrative support for the authority.

(f) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

(2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of this code;

(4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

(5) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

(6) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

(g) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health:

(1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;

(5) The Developmental Disabilities Council established by Executive Order No. 6-88 and continued by Executive Order No. 15-99.

(h) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in, and administered as a part of, the Department of Human Services:

(1) Women's Commission provided in §29-20-1 *et seq.* of this code; and

(2) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Homeland Security:

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

- (6) State Fire Marshal;
- (7) Board of Probation and Parole;
- (8) The West Virginia Fusion Center;
- (9) Division of Protective Services; and
- (10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

(j) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

- (1) Tax Division provided in §11-1-1 *et seq.* of this code;
- (2) Racing Commission provided in §19-23-1 *et seq.* of this code;
- (3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this code;
- (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;
- (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;
- (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;
- (7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;
- (8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;
- (9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;
- (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;
- (11) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and
- (12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

- (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

- (2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;
- (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;
- (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code; and
- (5) Division of Multimodal Transportation Facilities provided in §17-16F-1 *et seq.* of this code.
- (l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.
- (m) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.
- (n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms, and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers may not have their appellate or independent decision-making status affected by the enactment of this chapter.
- (o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.
- (p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary, or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.
- (q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this code is continued as a division of the Department of Commerce.
- (r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch, which includes the following sections and commissions listed under §29-1-1 of this code:

- (1) The Arts Section;
- (2) The Archives and History Section;
- (3) The Museums Section;
- (4) The Historic Preservation Section;
- (5) The State Library Section;
- (6) The National Coal Heritage Area Commission;
- (7) The Administrative Section;
- (8) The Educational Broadcasting Commission;
- (9) A Commission on the Arts;
- (10) A Commission on Archives and History;
- (11) A Library Commission; and
- (12) An Educational Broadcasting Council.

§5F-2-1a. Termination of the department of health and human resources; transfer and incorporation of agencies and boards legislative intent; creation of new departments.

(a) It is the intent of the Legislature to devolve the functions of the Department of Health and Human Resources into three new and separate departments of the executive branch as provided in this Act over a period of transition that concludes with the termination of the Department of Health and Human Resources. It is the intent of the Legislature that the provisions of this Act be construed to achieve the restructuring and reallocation of the powers, duties and functions of the Department of Health and Human Resources to the three new departments created in this section in an orderly manner designed to maintain the delivery of services that have heretofore been provided by the Department of Health and Human Resources by the new departments during the transition and beyond the termination of the Department of Health and Human Resources without disruption and to streamline and, where possible, to share administrative and operative expenses where common to each of the new departments. To that end, the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Human Services, the Secretary of the Department of Health and the Secretary of the Department of Health Facilities shall enter into a memorandum of understanding to effect the provisions of this Act that shall, at a minimum, create a Office of Shared Administration mutually administered by the secretaries that shall coordinate efforts with the Department of Administration to maximize efficiencies and function of services in an effort to contain expenses within the Department of Human Services, the Department of Health and the Department of Health Facilities. The Office of Shared Administration shall implement a plan to maximize function and efficiency administrative services for the purpose of streamlining administrative services and reducing expenses within the departments. The Office of Shared Administration shall complete implementation by June 30, 2024, and shall provide quarterly updates to the Legislative Oversight Commission on Health and Human Resources Accountability.

(b) The Department of Human Services created under §5F-1-2 of this code is a separate and distinct department of the executive branch. The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Department of Human Services:

- (1) Bureau for Social Services;
- (2) Bureau for Medical Services;
- (3) Bureau for Child Support Enforcement;
- (4) Bureau for Family Assistance;
- (5) Bureau for Behavioral Health; and

(6) Any other agency or entity hereinafter established within the Department of Human Services by an act of the Legislature.

(c) (1) The Department of Health created under §5F-1-2 of this code is a separate and distinct department of the executive branch. The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Department of Health:

(A) Bureau for Public Health;

(B) Office of Emergency Medical Services;

(C) Office of the Chief Medical Examiner;

(D) Center for Threat Preparedness;

(E) Health Care Authority; and

(F) Any other agency or entity hereinafter established within the Department of Health by an act of the Legislature.

(2) The Office of the Inspector General is a separate and autonomous agency within the Department of Health as provided in §16B-2-1. The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Office of the Inspector General. The Office of the Inspector General, shall include:

(A) Office of Health Facility Licensure and Certification;

(B) Board of Review;

(C) Foster Care Ombudsman;

(D) Olmstead Office;

(E) Investigations and Fraud Management;

(F) Quality Control;

(G) Mental Health Ombudsman;

(H) WV Clearance for Access: Registry and Employment Screening; and

(I) Human Rights Commission.

(d) The Department of Health Facilities created under §5F-1-2 of this code is a separate and

distinct department of the executive branch. The following state facilities, including all of the allied, advisory, affiliated, or related entities and funds associated with any state facility, are transferred to, incorporated in and administered as a part of the Department of Health Facilities:

- (1) Hopemont Hospital;
- (2) Jackie Withrow Hospital;
- (3) John Manchin, Sr. Health Care Center;
- (4) Lakin Hospital;
- (5) Mildred Mitchell-Bateman Hospital;
- (6) Welch Community Hospital;
- (7) William R. Sharpe Jr. Hospital; and
- (8) Any other agency or entity hereinafter established within the Department of Health Facilities by an act of the Legislature.

(e) Any secretary may recommend that a bureau, office, board, commission or other state entity be included or excluded from the organization of the departments created in this section to the Joint Committee on Government and Finance and the Legislative Commission on Health and Human Resources Accountability.

(f) All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and privileges which have been issued, promulgated, made, granted or allowed to become pursuant to authority provided by this code to the Department of Health and Human Resources or the Secretary of that Department that are in effect on the dates of the creation of the new departments as provided in this section shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the department or secretary that assumes authority over the subject matter of the same under the provisions of this Act.

§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 §5F-2-7 of this code;

(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;

(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 §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* 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 §29A-1-2 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 29A of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2 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;

(15) Enter into memoranda of understanding; and

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

(b) The secretaries of the departments 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 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 §29-6-10(5) and §29-6-10(6) 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 §29-6-10 and §29-6-10a of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

§5F-2-3. Administrators; appointment; oath; bond; compensation.

(a) Notwithstanding any other provision of this code (including subsections (h) and (i), section one of this article) to the contrary, each administrator required by other provisions of this code to be appointed by the Governor shall:

(1) Continue to be appointed by the Governor by and with the advice and consent of the Senate and each such administrator shall serve at the will and pleasure of the Governor, and the Governor may appoint a person to fill more than one such position of administrator and may appoint a secretary to fill one or more positions of such administrator, but each person appointed as such an administrator must possess whatever qualifications are elsewhere specified in this code as being required for appointment to such position;

(2) Take the oath of office or affirmation prescribed by section five, article four of the Constitution, and such oath shall be certified by the person who administers the same and filed in the office of the Secretary of State;

(3) Give bond in the penalty of \$15,000 conditioned for the faithful performance of the duties of the office, which bond shall be approved by the Attorney General as to form and by the secretary as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of the department; and

(4) Receive an annual salary as shall be fixed from time to time by law or as otherwise provided.

(b) Each administrator required by other provisions of this code to be appointed in any manner other than by the Governor shall continue to be appointed, shall take such oath of office, give such bond and receive such salary as shall be so specified by such other provisions of this code.

§5F-2-4. Transfer of records, property and personnel.

All records, assets and property, of whatever kind or character, owned by or utilized in the administration of the agencies and boards and all of the personnel utilized in the administration of such agencies and boards, including the administrators, are hereby transferred to the respective department to and in which such agencies and boards are transferred and incorporated.

WV Legislature

§5F-2-5. Independent appeal boards.

(a) The Legislature finds and declares that it may be desirable and appropriate for certain boards and commissions created by the Legislature which may be called upon to review, adjudicate or reverse administrative actions and decisions of agencies of the state to be fiscally and functionally independent of the agency or agencies reviewed, to issue rules and manage day-to-day operations independently, and to function as independent and autonomous instrumentalities of the state.

(b) To achieve this purpose, the Governor may by executive order provide for the transfer from the departments and agencies of the state of any or all of the following boards or commissions which are appellate bodies or were otherwise established to be independent decision makers:

- (1) Human rights commission provided for in article eleven, chapter five of this code;
- (2) Workers compensation appeals board and office of judges provided for in article five, chapter twenty-three of this code;
- (3) Air quality board provided for in article two, chapter twenty-two-b of this code;
- (4) Environmental quality board provided for in article three, chapter twenty-two-b of this code;
- (5) Surface mine board provided for in article four, chapter twenty-two-b of this code;
- (6) Board of appeals provided for in article five, chapter twenty-two-a of this code; and
- (7) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code.

(c) Upon any transfer by executive action authorized in subsection (b) of this section, the Governor may provide for administrative support by a department or agency of the state to the board or commission transferred in the same manner as is provided by a department secretary and for liaison with the office of the Governor with respect to budgetary and administrative matters through a department or agency of the state: Provided, That nothing in this section shall be construed to affect the existence, powers, authority and duties of independent boards and commissions or the membership, terms and qualifications of members of such boards and commissions.

(d) The authority to make transfers as provided in subsection (a) of this section shall expire on January 1, 1995. Upon the exercise of the powers granted in subsection (b) of this section, the Governor shall submit to the Legislature a report setting forth the reorganization implemented by executive action pursuant to this section, any recommendations for further reorganization requiring legislative action and drafts of any recommended legislation for consideration by the Legislature during the regular session in

the year 1995 to conform this code to the reorganization implemented by executive action.

(e) Upon transfers as authorized in subsection (a) of this section, the Governor may transfer the funds appropriated to the department or agency of the state attributable to the functions of the board or commission transferred in order to implement the transfer: Provided, That the authority to transfer funds under this section shall expire on June 30, 1995: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other dedicated account or fund for any use or purpose other than the purpose for which the account or fund is dedicated.

(f) Nothing in this section shall be construed to affect the consolidation of legal, technical and support personnel and of procedures of the air quality board, environmental quality board and surface mining board provided for in article one, chapter twenty-two-b of this code.

§5F-2-6. Reorganization of boards issuing or incurring debt.

(a) The Legislature finds and declares that boards and commissions empowered to issue bonds, incur indebtedness and provide financing or financial services for a public purpose may in some cases benefit the public interest or operate more efficiently through consolidation of legal, technical and support staff or services, sharing of office space, consolidation of procedures, and cooperation to identify circumstances where one entity may provide services for another, including, but not limited to, circumstances where one board or commission may finance the programs of another. On or after the effective date of this section, the treasurer shall be authorized at the request of the presiding officer of the entity to provide financial services, provide technical staff services, provide support staff and services and provide for the sharing of office space among and between the following entities:

(1) The staff of the Municipal Bond Commission provided for in article three, chapter thirteen of this code: Provided, That nothing in this section shall be construed to limit the independence and autonomy of the Municipal Bond Commission;

(2) The staff of the hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code: Provided, That nothing in this section shall be construed to limit the independence and autonomy of the hospital finance authority; and

(3) The staff of the public energy authority provided for in article one, chapter five-d of this code.

(b) In furtherance of the goal of increased efficiency and cooperation, the director of the debt management division of the board of Investments and the secretary of the Department of Administration are jointly charged with the responsibility of developing and presenting to the boards and commissions, to the board of Investments, to the state Treasurer, to the Governor and to the Legislature recommendations for administrative and statutory change.

(c) On the effective date of this section, any funds, equipment, personnel or office facilities associated with those responsibilities that are transferred from the board of Investments or any other agency, to the Treasurer's Office shall be transferred within thirty days of the transfer of those responsibilities.

§5F-2-7. Interdepartmental transfer of permanent state employees.

- (a) A department secretary may enter into a memorandum of understanding with another department secretary to transfer a permanent state employee from a position that is to be consolidated or eliminated, to a funded vacant position in another Department, in accordance with the provisions of this section and the law. To support the transfer of the employee, a department secretary may also transfer furniture and equipment, except motor vehicles and any assets purchased by designated funds for specific uses and purposes, the removal of which is prohibited by law or would jeopardize federal funds, grants or other funding sources.
- (b) The transferred employee shall receive the same level of benefits and rate of compensation or higher, and shall retain the same level of seniority.
- (c) An employee shall be given notice of the proposed transfer at least fifteen days prior to the transfer. During the notice period, an affected employee may agree to be voluntarily transferred.
- (d) If an employee does not volunteer to be transferred, then an involuntary transfer may be ordered. An involuntary transfer shall begin with the least senior permanent employee who qualifies for the position.
- (e) A classified employee who is transferred shall retain his or her classified status: Provided, That any transfer shall be made in accordance with the law.
- (f) An involuntary transfer may be rejected by an employee if the involuntary transfer would require the employee to travel thirty miles or more, one way, than the distance the employee currently travels from his or her current job site.
- (g) An employee who qualifies for and chooses to reject a transfer shall be laid off in accordance with the law.
- (h) Nothing in this section shall abridge any other rights provided by law.
- (i) Prior to December 31, 2005, the Division of Personnel shall promulgate an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section.
- (j) The Division of Personnel is authorized to promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section.
- (k) Annually, on or before January 1, the Division of Personnel shall report to the Joint Committee on Government and Finance, on all interdepartmental employee transfers, including but not limited to, voluntary and involuntary transfers, furniture and equipment transfers, and the Departments involved in the transfers.

§5F-2-8. Special merit-based personnel system for Department of Transportation employees.

- (a) In order to attract and retain employees in the Department of Transportation, the Secretary of Transportation shall establish a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions shall be made solely on the basis of merit and fitness for the position.
- (b) The Department of Transportation personnel system shall be founded on effective performance management principles that set clear goals, provide efficient and effective services for our citizens, and appraise and reward employees for being responsible and performing as required.
- (c) Beginning on January 1, 2022, notwithstanding any provision of this code or any rule to the contrary, employees and positions within the various agencies, boards, commissions, and divisions within the Department of Transportation currently governed by the provisions of §29-6-1 *et seq.* of this code shall be subject to the personnel system created pursuant to this section: *Provided*, That such employees and positions shall be deemed to retain their classified or classified-exempt status and all rights and privileges thereof. The employees of the Department of Transportation shall be afforded due process protections through §6C-2-1 *et seq.* of this code or other procedures established by the department that assure all of the protections required by law.
- (d) The Department of Transportation personnel system is not exempt from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the employment process.
- (e) The Department of Transportation personnel system may not be applied in any manner that would disqualify the department or its agencies, boards, commissions, or divisions for eligibility for any federal funding or assistance.
- (f) The Division of Personnel shall, upon request of the Secretary of Transportation, take any action necessary to assist the Department of Transportation in completing the transition to the department's personnel system in an orderly and efficient manner.
- (g) The Secretary of Transportation may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of this section.
- (h) Notwithstanding any provision of this code to the contrary, the Department of Transportation personnel system shall require that any probationary employee of the Department of Transportation who is terminated for failing a drug or alcohol screen or

refusing a drug or alcohol screen shall not be entitled to severance pay.

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§5F-2-9. Transfer of New Hires and Promoted Employees Within the Bureau of Senior Services and Certain Departments to Classified Exempt System.

(a) The Legislature hereby finds that to attract and retain employees in the Bureau of Senior Services, Department of Administration, Department of Environmental Protection, Department of Revenue, and Department of Veterans' Assistance, the chief administrative officers of this bureau and these departments, and heads of the agencies, boards, and commissions therein require additional flexibility in the promotion, transfer, layoff, removal, discipline, and compensation of state employees within this bureau and these departments.

(b) Notwithstanding any provision of this code or any rule to the contrary, beginning on July 1, 2025, all employees of the Bureau of Senior Services, Department of Administration, Department of Environmental Protection, Department of Revenue, and Department of Veterans' Assistance shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Bureau of Senior Services, Department of Administration, Department of Environmental Protection, Department of Revenue, and Department of Veterans' Assistance who are currently members of the classified civil service system shall retain their status as long as they remain in their current position;

(2) All employees of this bureau and these departments who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(3) Any employee of this bureau and these departments that leaves his or her position and remains an employee within this bureau or any of these departments shall, at that time, be transferred to the classified exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(c) The Commissioner of the Bureau of Senior Services and the secretary of each of these departments shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal law, federal regulation, or the requirements for receipt of federal funding or assistance.

(d) Subsection (b) of this section shall not apply to any position appointed by the Governor.

(e) Nothing in this section shall exempt this bureau or these departments from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

§5F-3-1. Recommendations for further reorganization.

The Governor shall submit to the Legislature on or before January 1, 1991, a report setting forth the reorganization implemented by executive action pursuant to this chapter and resulting cost savings as determined by the Governor, any recommendations for further reorganization requiring legislative action and drafts of recommended legislation to implement the reorganization requiring legislative action.

§5F-3-2. Operative dates.

The provisions of this chapter shall become operative as to any department created in section two, article one of this chapter upon the appointment of the secretary of such department.

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§5F-3-3. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the chapter, and to this end the provisions of this chapter are declared to be severable.

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