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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2665

(By Mr. Speaker, Mr. Chambers, & Del. R. Burk)
[By Request of the Executive]

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Passed April 8, 1989

In Effect July 1, 1989 ~~Passage~~

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COMMITTEE SUBSTITUTE
FOR

H. B. 2665

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
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[Passed April 8, 1989; in effect July 1, 1989.]

AN ACT to repeal sections four-a, thirteen, fifteen and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two, chapter five-f; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six; and to further amend article six by adding thereto two new sections, designated sections nine-a and twenty-five, all relating to the civil service system; modification of layoff and bumping rights of classified employees; definition of terms; classified service; classified-exempt service; exemptions; creation of division of personnel; sections; creation of personnel board; members; terms; quorum; vacancies; powers and duties; director of division of personnel appointed; qualifications; powers and duties; civil service commission abolished; transfer of duties and responsibilities; rule of construction; transfer of employees, equipment, and records; continuation of programs, protections and rules; state personnel advisory council; rules of division; eligible lists; duties of state officers and employees; legal proceedings; certifi-

cation of payrolls; wrongfully withholding certification of payroll; repeal of archaic provisions and provisions relating to functions formerly transferred to the education and state employees grievance board; records of state personnel division; services to political subdivisions; apprenticeship program; advisory board for the apprenticeship program; favoritism or discrimination; acts prohibited; appropriations, cost of administering article; acceptance of grant or contribution; implementation; and report to governor and Legislature.

Be it enacted by the Legislature of West Virginia:

That sections four-a, thirteen, fifteen, and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article two, chapter five-f be amended and reenacted; that sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six, chapter twenty-nine be amended and reenacted; and that article six be further amended by adding thereto two new sections, designated sections nine-a and twenty-five, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

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

9 (2) Cause the various agencies and boards to be
10 operated effectively, efficiently and economically, and

11 develop goals, objectives, policies and plans that are
12 necessary or desirable for the effective, efficient and
13 economical operation of the department;

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

18 (4) Delegate, assign, transfer or combine responsibil-
19 ities or duties to or among employees, other than
20 administrators or board members;

21 (5) Reorganize internal functions or operations;

22 (6) Formulate comprehensive budgets for considera-
23 tion by the governor, and transfer within the depart-
24 ment funds appropriated to the various agencies of the
25 department which are not expended due to cost savings
26 resulting from the implementation of the provisions of
27 this chapter: *Provided*, That no more than twenty-five
28 percent of the funds appropriated to any one agency or
29 board may be transferred to other agencies or boards
30 within the department: *Provided, however*, That no
31 funds may be transferred from a special revenue
32 account, dedicated account, capital expenditure account
33 or any other account or funds specifically exempted by
34 the Legislature from transfer, except that the use of
35 appropriations from the state road fund transferred to
36 the office of the secretary of the department of trans-
37 portation is not a use other than the purpose for which
38 such funds were dedicated and is permitted: *Provided*
39 *further*, That if the Legislature by subsequent enactment
40 consolidates agencies, boards or functions, the secretary
41 may transfer the funds formerly appropriated to such
42 agency, board or function in order to implement such
43 consolidation. The authority to transfer funds under this
44 section shall expire on the thirtieth day of June, one
45 thousand nine hundred eighty-nine;

46 (7) Enter into contracts or agreements requiring the
47 expenditure of public funds, and authorize the expend-
48 iture or obligating of public funds as authorized by
49 law: *Provided*, That the powers granted to the secretary
50 to enter into contracts or agreements and to make

51 expenditures or obligations of public funds under this
52 provision shall not exceed or be interpreted as authority
53 to exceed the powers heretofore granted by the Legis-
54 lature to the various commissioners, directors or board
55 members of the various departments, agencies or boards
56 that comprise and are incorporated into each secretary's
57 department under this chapter;

58 (8) Acquire by lease or purchase property of whatever
59 kind or character, and convey or dispose of any property
60 of whatever kind or character as authorized by law:
61 *Provided*, That the powers granted to the secretary to
62 lease, purchase, convey or dispose of such property shall
63 not exceed or be interpreted as authority to exceed the
64 powers heretofore granted by the Legislature to the
65 various commissioners, directors or board members of
66 the various departments, agencies or boards that
67 comprise and are incorporated into each secretary's
68 department under this chapter;

69 (9) Conduct internal audits;

70 (10) Supervise internal management;

71 (11) Promulgate rules, as defined in section two,
72 article one, chapter twenty-nine-a of this code, to
73 implement and make effective the powers, authority and
74 duties granted and imposed by the provisions of this
75 chapter, such promulgation to be in accordance with the
76 provisions of chapter twenty-nine-a of this code;

77 (12) Grant or withhold written consent to the proposal
78 of any rule, as defined in section two, article one,
79 chapter twenty-nine-a of this code, by any administra-
80 tor, agency or board within the department, without
81 which written consent no proposal of a rule shall have
82 any force or effect;

83 (13) Delegate to administrators such duties of the
84 secretary as the secretary may deem appropriate from
85 time to time to facilitate execution of the powers,
86 authority and duties delegated to the secretary; and

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

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

96 (1) The elimination, reduction and restrictions in the
97 use of the state's vehicle or other transportation fleet;

98 (2) The elimination, reduction and restrictions in the
99 preparation of state government publications, including
100 annual reports, informational materials, and promo-
101 tional materials;

102 (3) The termination or renegotiation of terms con-
103 tained in lease agreements between the state and private
104 sector for offices, equipment and services;

105 (4) The adoption of appropriate systems for account-
106 ing, including consideration of an accrual basis financial
107 accounting and reporting system;

108 (5) The adoption of revised procurement practices to
109 facilitate cost effective purchasing procedures, includ-
110 ing consideration of means by which domestic busi-
111 nesses may be assisted to compete for state government
112 purchases; and

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

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

124 (d) The layoff and recall rights of employees within
125 the classified service of the state as provided in
126 subsections five and six, section ten, article six, chapter

127 twenty-nine of this code shall be limited to the organ-
128 izational unit within the agency or board and within the
129 occupational group established by the classification and
130 compensation plan for the classified service of the
131 agency or board in which the employee was employed
132 prior to the agency or board's transfer or incorporation
133 into the department: *Provided*, That the employee shall
134 possess the qualifications established for the job class.
135 The duration of recall rights provided in this subsection
136 shall be limited to two years or the length of tenure,
137 whichever is less. Except as provided in this subsection,
138 nothing contained in this section shall be construed to
139 abridge the rights of employees within the classified
140 service of the state as provided in sections ten and ten-
141 a, article six, chapter twenty-nine of this code or the
142 right of classified employees of the board of regents to
143 the procedures and protections set forth in article
144 twenty-six-b, chapter eighteen of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-2. Definition of terms.

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

3 (a) "Administrator" means any person who fills a
4 statutorily created position within or related to an
5 agency or board (other than a board member) and who
6 is designated by statute as commissioner, deputy
7 commissioner, assistant commissioner, director, chancel-
8 lor, chief, executive director, executive secretary,
9 superintendent, deputy superintendent, or other admi-
10 nistrative title, however designated;

11 (b) "Agency" means any administrative unit of state
12 government, including any authority, board, bureau,
13 commission, committee, council, division, section or
14 office;

15 (c) "Appointing authority" means a person or group
16 of persons authorized by an agency to make appoint-
17 ments to positions in the classified or classified-exempt

18 service;

19 (d) "Board" means the state personnel board created
20 by section six of this article;

21 (e) "Class" or "class of positions" means a group of
22 positions sufficiently similar in duties, training, expe-
23 rience and responsibilities, as determined by specifica-
24 tions, that the same qualifications, the same title and the
25 same schedule of compensation and benefits may be
26 equitably applied to each position in the group;

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

30 (g) "Classified-exempt service" means an employee
31 whose position satisfies the definitions for "class" and
32 "classify" but who is not covered under the civil service
33 system or employed by the board of regents;

34 (h) "Classified service" means an employee whose job
35 satisfies the definitions for "class" and "classify" and
36 who is covered under the civil service system;

37 (i) "Classify" means to group all positions in classes
38 and to allocate every position to the appropriate class in
39 the classification plan;

40 (j) "Director" means the head of the division of
41 personnel as appointed by section seven of this article;

42 (k) "Council" means the state personnel advisory
43 council created in section nine-a of this article;

44 (l) "Division" means the division of personnel herein
45 created;

46 (m) "Policymaking position" means a position in which
47 the person occupying it (1) acts as an advisor to, or
48 formulates plans for the implementation of broad goals
49 for an administrator or the governor, (2) is in charge of
50 major administrative component of the agency and (3)
51 reports directly and is directly accountable to an
52 administrator or the governor;

53 (n) "Position" means a particular job which has been
54 classified based on specifications;

55 (o) "Secretary" means the secretary of the department
56 of administration created in section two, article one,
57 chapter five-f of this code;

58 (p) "Specification" means a description of a class of
59 position which defines the class, provides examples of
60 work performed and the minimum qualifications
61 required for employment;

62 (q) "Veteran" means any person who has served in the
63 armed forces of the United States of America during
64 World War I (April 6, 1917-November 11, 1918), World
65 War II (December 7, 1941-December 31, 1946), the
66 Korean Conflict (June 27, 1950-January 31, 1955), or the
67 Vietnam Conflict (August 5, 1964-May 7, 1975), and who
68 has received a discharge under honorable conditions
69 from such service.

§29-6-3. Classified service.

1 The classified service includes all positions covered by
2 the civil service system as of the effective date of this
3 article, except as otherwise provided in this article.
4 Positions may be added to the classified service as
5 provided in section four of this article.

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

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

4 (b) Except for the period commencing on the first day
5 of July, one thousand nine hundred ninety-two, and
6 ending on the first Monday after the second Wednesday
7 of the following January and except for the same periods
8 commencing in the year one thousand nine hundred
9 ninety-six, and in each fourth year thereafter, the
10 governor may, by executive order, with the written
11 consent of the state personnel board and the appointing
12 authority concerned, add to the list of positions in the
13 classified service, but such additions shall not include
14 any positions specifically exempted from coverage as

15 provided in this section.

16 (c) The following offices and positions are exempt
17 from coverage under the classified service:

18 (1) All judges, officers and employees of the judiciary;

19 (2) All members, officers and employees of the
20 Legislature;

21 (3) All officers elected by popular vote and employees
22 of the officer;

23 (4) All secretaries of departments and employees
24 within the office of a secretary;

25 (5) Members of boards and commissions and heads of
26 departments appointed by the governor or such heads
27 of departments selected by commissions or boards when
28 expressly exempt by law or board order;

29 (6) Excluding the policymaking positions in an
30 agency, one principal assistant or deputy and one
31 private secretary for each board or commission or head
32 of a department elected or appointed by the governor
33 or Legislature;

34 (7) All policymaking positions;

35 (8) Patients or inmates employed in state institutions;

36 (9) Persons employed in a professional or scientific
37 capacity to make or conduct a temporary and special
38 inquiry, investigation or examination on behalf of the
39 Legislature or a committee thereof, an executive
40 department or by authority of the governor;

41 (10) All employees of the office of the governor,
42 including all employees assigned to the executive
43 mansion;

44 (11) County road supervisors employed by the depart-
45 ment of highways or their successors;

46 (12) Part-time professional personnel engaged in
47 professional services without administrative duties and
48 personnel employed for ninety days or less during a
49 working year;

50 (13) Members and employees of the board of regents
51 or its successor agencies;

52 (14) Uniformed personnel of the division of public
53 safety; and

54 (15) Seasonal employees in the state forests, parks, and
55 recreational areas working less than 1040 hours per
56 calendar year.

57 (d) The Legislature finds that the holding of political
58 beliefs and party commitments consistent or compatible
59 with those of the governor contributes in an essential
60 way to the effective performance of and is an approp-
61 riate requirement for occupying certain offices or
62 positions in state government, such as the secretaries of
63 departments and the employees within their offices, the
64 heads of agencies appointed by the governor and, for
65 each such head of agency, a private secretary and one
66 principal assistant or deputy, all employees of the office
67 of the governor including all employees assigned to the
68 executive mansion, as well as any persons appointed by
69 the governor to fill policymaking positions and county
70 road supervisors or their successors, in that such offices
71 or positions are confidential in character and/or require
72 their holders to act as advisors to the governor or his
73 appointees, to formulate and implement the policies and
74 goals of the governor of his appointees, or to help the
75 governor or his appointees communicate with and
76 explain their policies and views to the public, the
77 Legislature, and the press.

§29-6-5. Creation of division of personnel; sections.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-nine, there is hereby created a division
3 of personnel within the executive branch.

4 (b) The division of personnel shall consist of the
5 following sections:

6 (1) Applicant services;

7 (2) Classification and compensation;

- 8 (3) Management development and training;
- 9 (4) Program evaluation and payroll;
- 10 (5) Employee services;
- 11 (6) Employee relations; and
- 12 (7) Administrative and staff services.

13 Each section shall be under the control of a section
14 chief to be appointed by the director who shall be
15 qualified by reason of exceptional training and expe-
16 rience in the field of activities of the respective section.
17 The director has authority to establish such additional
18 sections as may be determined necessary to carry out the
19 purpose of this article.

**§29-6-6. State personnel board created; members; term;
quorum; vacancies; powers and duties.**

1 (a) There is hereby created within the division a state
2 personnel board which shall consist of five members
3 appointed by the governor with the advice and consent
4 of the Senate for terms of four years and until the
5 appointment of their successors: *Provided*, That of the
6 members first appointed, one shall be appointed for a
7 term of one year, one for two years, one for three years,
8 and one for four years. No more than three members
9 may be of the same political party. Three members of
10 the board constitute a quorum.

11 (b) A member of the board may not be removed from
12 office except for official misconduct, incompetence,
13 neglect of duty, gross immorality or malfeasance, and
14 then only in the manner prescribed in article six,
15 chapter six of this code for the removal by the governor
16 of state elected officers.

17 (c) Citizen members of the board shall each be paid
18 one hundred dollars for each day devoted to the work
19 of the board. Each member shall be reimbursed for all
20 reasonable and necessary expenses actually incurred in
21 the performance of his duties, except that in the event
22 the expenses are paid, or are to be paid, by a third party,
23 the members shall not be reimbursed by the state.

24 (d) The board shall elect one of its members as
25 chairperson and shall meet at such time and place as
26 shall be specified by the call of the chairman. At least
27 one meeting shall be held in each month. All meetings
28 shall be open to the public. Notice of each meeting shall
29 be given in writing to each member by the director at
30 least three days in advance of the meeting period.

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

33 (1) Promulgate rules in accordance with chapter
34 twenty-nine-a of this code to implement the provisions
35 of this article;

36 (2) Interpret the application of this article to any
37 public body or entity;

38 (3) Authorize and conduct such studies, inquiries,
39 investigations or hearings in the operation of this article
40 as it deems necessary.

41 (f) The director or the board may subpoena and
42 require the attendance of witnesses in the production of
43 evidence or documents relevant to any proceeding under
44 this article.

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

1 (a) The governor shall appoint, by and with the advice
2 and consent of the Senate, the director who shall serve
3 at the will and pleasure of the governor and who shall
4 be paid an annual salary and be governed by the
5 provisions of section three, article two, chapter five-f of
6 this code. The director shall be a person knowledgeable
7 of the application of the merit principles in public
8 employment as evidenced by the obtainment of a degree
9 in business administration, personnel administration,
10 public administration or the equivalent and at least five
11 years of administrative experience in public personnel
12 administration.

13 (b) The director shall:

14 (1) Consistent with the provisions of this article
15 administer the operations of the division, allocating the

16 functions and activities of the division among sections
17 as the director may establish;

18 (2) Maintain a personnel management information
19 system necessary to carry out the provisions of this
20 article;

21 (3) Supervise payrolls and audit payrolls, reports or
22 transactions for conformity with the provisions of this
23 article;

24 (4) Plan, evaluate, administer and implement person-
25 nel programs and policies in state government and to
26 political subdivisions after agreement by the parties;

27 (5) Supervise the employee selection process and
28 employ performance evaluation procedures;

29 (6) Develop programs to improve efficiency and
30 effectiveness of the public service, including, but not
31 limited to, employee training, development, assistance
32 and incentives;

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

37 (8) Establish and provide for a public employee
38 interchange program and may provide for a voluntary
39 employee interchange program between public and
40 private sector employees;

41 (9) Establish an internship program;

42 (10) Assist the governor and secretary of the depart-
43 ment of administration in general work force planning
44 and other personnel matters;

45 (11) Make an annual report to the governor and
46 Legislature and all other special or periodic reports as
47 may be required;

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

49 (13) Recommend rules to the board for implementa-
50 tion of this article; and

51 (14) Conduct schools, seminars or classes regarding

52 handling of complaints, disciplinary, matters and
53 operation of the state personnel board for supervisory
54 employees of the state.

§29-6-8. Duties of board generally.

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

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

5 (2) Advise the governor, the secretary, and the
6 director on problems concerning personnel
7 administration.

8 (3) Foster the interest of institutions of learning and
9 of industrial, civic, professional and employee organiza-
10 tions in the improvement of personnel standards in the
11 classified service.

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

16 (5) Approve the budget as prepared by the director
17 for administration of this article before submission to
18 the division of finance and administration.

**§29-6-9. Civil service commission abolished; transfer of
duties and responsibilities; rule of construc-
tion; transfer of employees, equipment, and
records; continuation of programs, protections
and rules.**

1 (a) The civil service commission is hereby abolished.
2 All duties and responsibilities heretofore imposed upon
3 the civil service commission are hereby imposed upon
4 the state personnel board, and all duties and reponsibil-
5 ities heretofore imposed upon the director of the civil
6 service system are hereby imposed upon the director of
7 the division of personnel. Except as used in this section,
8 the words "civil service commission" or "commission,"
9 when used in this article, shall refer to and mean the
10 state personnel board. Whenever reference is made to
11 the director of the civil service commission, the power

12 or duty prescribed shall apply to the director of the
13 division of personnel.

14 (b) Persons employed on the effective date of this
15 article by the civil service commission, the duties and
16 functions of which have been transferred to the division
17 of personnel, are hereby assigned and transferred to the
18 division of personnel. It is the intent of this article to
19 consolidate into the division of personnel those agencies
20 and employees performing personnel functions which
21 will be facilitated by their consolidation, except as
22 excluded in section four of this article. On the effective
23 date of this article, all personnel payroll positions and
24 employees occupying those positions necessary to
25 effectuate the purposes of this article shall be trans-
26 ferred to the division of personnel: *Provided*, That in
27 order to provide for a smooth transition, the governor
28 may, by executive order, determine those positions and
29 employees that shall be transferred and provide that the
30 transfers provided for in this subsection take effect no
31 later than the last day of September, one thousand nine
32 hundred eighty-nine.

33 (c) Upon the transfer, if any, of any personnel payroll
34 positions as provided in subsection (b) of this section
35 from the division of highways, the division of motor
36 vehicles, the workers' compensation fund, the public
37 service commission, or any other department or division
38 operating from special revenue funds or federal funds,
39 such department or division shall pay to the division of
40 personnel the costs of personnel services, as determined
41 by the secretary of the department of administration,
42 provided to their respective divisions. When no specific
43 appropriation is made for this purpose, such payments
44 shall be made from personal services, annual increment,
45 and employee benefit appropriations to the department
46 or division. Upon the transfer of any personnel payroll
47 positions to the division of personnel from any depart-
48 ment or division funded from general revenues of the
49 state, the governor is authorized and empowered to
50 order the transfer of funds for those positions.

51 (d) The abolishment of the civil service commission
52 and the creation of the division of personnel shall in no

53 way hinder any ongoing programs, benefits, litigation,
54 or grievance procedures. Employees in the classified
55 service who have gained permanent status as of the
56 effective date of this article will not be subject to further
57 qualifying examination by reason of any transfer
58 required by the provisions of this section, except when
59 they wish to qualify for promotion. Nothing contained
60 in this section shall be construed to abridge the rights
61 of employees within the classified service of the state to
62 the procedures and protections set forth in sections ten
63 and ten-a of this article, except as provided in subsection
64 (d), section two, article two, chapter five-f of this code.

65 (e) On the effective date of this article, all equipment
66 and records necessary to effectuate the purposes of this
67 article shall be transferred to the division of personnel:
68 *Provided*, That in order to provide for a smooth
69 transition, the governor may, by executive order,
70 determine the equipment and records to be transferred
71 and provide that the transfers provided for in this
72 subsection take effect no later than the last day of
73 September, one thousand nine hundred eighty-nine.

74 (f) The rules of the civil service commission shall
75 remain in force and effect until promulgation of new or
76 additional rules by the state personnel board.

77 (g) Nothing contained in this article shall be construed
78 to preclude the reclassification or reallocation of
79 positions in accordance with procedures set forth in
80 section ten of this article.

§29-6-9a. State personnel advisory council.

1 (a) There is hereby created the state personnel
2 advisory council, which consists of eleven members
3 appointed by the governor. Six members shall be
4 classified employees and two, classified-exempt em-
5 ployees. Of the remaining three members, one shall be
6 appointed from a list of three persons recommended by
7 the American federation of state, county, and municipal
8 employees; one, from a list of three persons recom-
9 mended by the communication workers of America; and
10 one, from a list of three persons recommended by
11 district 1199, national union of hospital and health care

12 employees, AFL-CIO. Members of the council shall
13 serve for a term concurrent with that of the governor.

14 (b) The state personnel advisory council shall:

15 (1) Advise the director and the board in the develop-
16 ment of comprehensive policies and programs for the
17 improvement of personnel administration in the state;

18 (2) Assist in the formulation of rules and standards
19 relating to the state system of personnel administration;

20 (3) Assist in the promotion of public understanding of
21 the purposes, policies and practices of the state system
22 of personnel administration.

23 (c) Members of the council shall receive no compen-
24 sation, but shall be reimbursed for their actual and
25 necessary expenses.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate,
2 amend or repeal rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article.

5 (1) For the preparation, maintenance and revision of
6 a position classification plan for all positions in the
7 classified service and a position classification plan for
8 all positions in the classified-exempt service, based upon
9 similarity of duties performed and responsibilities
10 assumed, so that the same qualifications may reasonably
11 be required for and the same schedule of pay may be
12 equitably applied to all positions in the same class. The
13 position classification plan for classified-exempt service
14 shall become effective not later than the first day of
15 July, one thousand nine hundred seventy-nine. Except
16 for persons employed by the board of regents, all
17 persons receiving compensation in the form of a wage
18 or salary, funded either in part or in whole by the state,
19 shall be included in either the position classification
20 plan for classified service or classified-exempt service.
21 After each such classification plan has been approved
22 by the board, the director shall allocate the position of
23 every employee in the classified service to one of the

24 classes in the classified plan and the position of every
25 employee in the classified-exempt service to one of the
26 positions in the classified-exempt plan. Any employee
27 affected by the allocation of a position to a class shall,
28 after filing with the director of personnel a written
29 request for reconsideration thereof in such manner and
30 form as the director may prescribe, be given a reason-
31 able opportunity to be heard thereon by the director.
32 The interested appointing authority shall be given like
33 opportunity to be heard.

34 (2) For a pay plan for all employees in the classified
35 service, after consultation with appointing authorities
36 and the state fiscal officers, and after a public hearing
37 held by the board. Such pay plan shall become effective
38 only after it has been approved by the governor after
39 submission to him by the board. Amendments to the pay
40 plan may be made in the same manner. Each employee
41 shall be paid at one of the rates set forth in the pay plan
42 for the class of position in which he is employed. The
43 principle of equal pay for equal work in the several
44 agencies of the state government shall be followed in the
45 pay plan as established hereby.

46 (3) For open competitive examinations to test the
47 relative fitness of applicants for the respective positions
48 in the classified service. Such examinations need not be
49 held until after the rules have been adopted, the service
50 classified and a pay plan established, but shall be held
51 not later than one year after this article takes effect.
52 Such examinations shall be announced publicly at least
53 fifteen days in advance of the date fixed for the filing
54 of applications therefor, and may be advertised through
55 the press, radio and other media. The director may,
56 however, in his discretion, continue to receive applica-
57 tions and examine candidates long enough to assure a
58 sufficient number of eligibles to meet the needs of the
59 service; and may add the names of successful candidates
60 to existing eligible lists in accordance with their
61 respective ratings.

62 An additional five points shall be awarded to the score
63 of any examination successfully completed by a veteran.
64 A disabled veteran shall be entitled to an additional ten

65 points, rather than five points as aforesaid, upon
66 successful completion of any examination.

67 (4) For promotions within the classified service which
68 shall give appropriate consideration to the applicant's
69 qualifications, record of performance and his score on
70 a written examination, when such examination is
71 practicable. In filling vacancies an effort should be
72 made to achieve a balance between promotion from
73 within the service and the introduction into the service
74 of qualified new employees. An advancement in rank or
75 grade or an increase in salary beyond the maximum
76 fixed for the class shall constitute a promotion.

77 (5) For layoffs by classification for reason of lack of
78 funds or work, or abolition of a position, or material
79 changes in duties or organization, or any loss of position
80 because of the provisions of this subdivision and for
81 recall of employees so laid off, consideration shall be
82 given to an employee's seniority as measured by
83 permanent employment in the classified service or a
84 state agency. In the event that the agency wishes to lay
85 off a more senior employee, the agency must demon-
86 strate that the senior employee cannot perform any
87 other job duties held by less senior employees within
88 that agency in the job class, or any other equivalent or
89 lower job class for which the senior employee is
90 qualified: *Provided*, That if an employee refuses to
91 accept a position in a lower job class, such employee
92 shall retain all rights of recall as hereinafter provided.

93 (6) For recall of employees, recall shall be by reverse
94 order of layoff to any job class that the employee has
95 previously held or a lower class in the series within the
96 agency as that job class becomes vacant. An employee
97 will retain his place on the recall list for the same period
98 of time as his seniority on the date of his layoff, or for
99 a period of two years, whichever is less. No new
100 employees shall be hired for any vacancy in his or her
101 job class or in a lower job class in the series until all
102 eligible employees on layoff are given the opportunity
103 to refuse that job class. An employee shall be recalled
104 onto jobs within the county wherein his last place of
105 employment is located or within a county contiguous

106 thereto. Any laid-off employee who is eligible for a
107 vacant position shall be notified by certified mail of the
108 vacancy. It shall be the responsibility of the employee
109 to notify the agency of any change in his address.

110 (7) For the establishment of eligible lists for appoint-
111 ment and promotion within the classified service, upon
112 which lists shall be placed the names of successful
113 candidates in the order of their relative excellence in the
114 respective examinations. Eligibility for appointment
115 from any such list shall continue not longer than three
116 years. An appointing authority shall make his selection
117 from the top ten names on the appropriate lists of
118 eligibles, or may choose any person scoring at or above
119 the ninetieth percentile on the examination.

120 (8) For the rejection of candidates or eligibles within
121 the classified service who fail to comply with reasonable
122 requirements in regard to such factors as age, physical
123 condition, character, training and experience, who are
124 addicted to alcohol or narcotics, or who have attempted
125 any deception or fraud in connection with an examina-
126 tion, or where in the judgment of the board there is
127 reasonable doubt of the loyalty of the candidate or
128 allegiance to the nation.

129 (9) For a period of probation not to exceed one year
130 before appointment or promotion may be made complete
131 within the classified service.

132 (10) For provisional employment without competitive
133 examination within the classified service when there is
134 no appropriate eligible list available. No such provi-
135 sional employment may continue longer than six
136 months, nor shall successive provisional appointments
137 be allowed, except during the first year after the
138 effective date of this article, in order to avoid stoppage
139 of orderly conduct of the business of the state.

140 (11) For keeping records of performance of all
141 employees in the classified service, which service
142 records may be considered in determining salary
143 increases and decreases provided in the pay plan; as a
144 factor in promotion tests; as a factor in determining the
145 order of layoffs because of lack of funds or work and

146 in reinstatement; and as a factor in demotions, dis-
147 charges and transfers.

148 (12) For discharge or reduction in rank or grade only
149 for cause of employees in the classified service.
150 Discharge or reduction of these employees shall take
151 place only after the person to be discharged or reduced
152 has been presented with the reasons for such discharge
153 or reduction stated in writing, and has been allowed a
154 reasonable time to reply thereto in writing, or upon
155 request to appear personally and reply to the appointing
156 authority or his deputy. The statement of reasons and
157 the reply shall be filed as a public record with the
158 director. Notwithstanding the foregoing provisions of
159 this subdivision, no permanent employee shall be
160 discharged from the classified service for absenteeism
161 upon using all entitlement to annual leave and sick leave
162 when such use has been due to illness or injury as
163 verified by a physicians's certification or for other
164 extenuating circumstances beyond the employee's
165 control unless his disability is of such a nature as to
166 permanently incapacitate him from the performance of
167 the duties of his position. Upon exhaustion of annual
168 leave and sick leave credits for the reasons specified
169 herein and with certification by a physician that the
170 employee is unable to perform his duties, a permanent
171 employee shall be granted a leave of absence without
172 pay for a period not to exceed six months if such
173 employee is not permanently unable to satisfactorily
174 perform the duties of his position.

175 (13) For such other rules and administrative regula-
176 tions, not inconsistent with this article, as may be proper
177 and necessary for its enforcement.

178 (14) The board shall review and approve by rules and
179 regulations the establishment of all classified-exempt
180 positions to assure consistent interpretation of the
181 provisions of this article.

182 The provisions of this section are subject to any
183 modifications contained in chapter five-f of this code.
184 The board may include in the rules provided for in this
185 article such provisions as are necessary to conform to

186 regulations and standards of any federal agency
187 governing the receipt and use of federal grants-in-aid by
188 any state agency, anything in this article to the contrary
189 notwithstanding. The board and the director shall see
190 that rules and practices meeting such standards are in
191 effect continuously after the effective date of this article.

§29-6-11. Duty to furnish facilities for division's use.

1 All officers and employees of the state and of munic-
2 ipalities and political subdivisions of the state shall
3 allow the division the reasonable use of public buildings
4 under their control, and furnish heat, light and furni-
5 ture, for any examination, hearing or investigation
6 authorized by this article. The division shall pay to a
7 municipality or political subdivision the reasonable cost
8 of any such facilities furnished by it.

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

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

1 (a) No state disbursing or auditing officer shall make
2 or approve or take any part in making or approving any
3 payment for personal service to any person holding a
4 position in the classified service unless the payroll
5 voucher or account of such pay bears the certification
6 of the director, or of his authorized agent, that the
7 persons named therein have been appointed and em-
8 ployed in accordance with the provisions of this article
9 and the rules, regulations and orders thereunder. The

10 director may for proper cause withhold certification
11 from an entire payroll or from any specific item or items
12 thereon. The director may, however, provide that
13 certification of payrolls may be made once every six
14 months, and such certification shall remain in effect
15 except in the case of any officer or employee whose
16 status has changed after the last certification of his
17 payroll. In the latter case no voucher for payment of
18 salary to such employee shall be issued or payment of
19 salary made without further certification by the
20 director.

21 (b) If the director wrongfully withholds certification
22 of the payroll voucher or account of any employee, such
23 employee may maintain a proceeding in the courts to
24 compel the director to certify such payroll voucher or
25 account.

§29-6-16. Records of division.

1 The records of the division, except such records as the
2 rules may properly require to be held confidential for
3 reasons of public policy, shall be public records and
4 shall be open to public inspection, subject to reasonable
5 regulations as to the time and manner of inspection
6 which may be prescribed by the director.

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

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

16 (b) The director may cooperate with governmental
17 agencies for other jurisdictions charged with personnel
18 administration in conducting joint tests and establishing
19 joint lists from which eligibles shall be certified for
20 appointment in accordance with the provisions of this
21 article.

§29-6-17a. Apprenticeship program.

1 (a) The division of personnel shall develop and monitor
2 apprenticeship programs for all state agencies that have
3 employees working in apprenticeable trades which are,
4 or may be recognized by, the United States department
5 of labor, bureau of apprenticeship and training.

6 (b) These apprenticeship programs will be developed
7 and conducted in a manner that will assure meeting the
8 national minimum requirements of quality and be
9 registered with the United States department of labor,
10 bureau of apprenticeship and training.

11 (c) The director or his designee, in cooperation with
12 the participating appointing authorities within each
13 agency, shall develop and annually revise by the thirty-
14 first day of December a list of employment classifica-
15 tions appropriate for apprenticeship training, which
16 may include, but not be limited to, the following
17 classifications: Computer service technicians; legal
18 assistants; computer systems analysts; computer pro-
19 grammers; computer operators; office machine repair-
20 ers; physical therapy assistants; electrical engineers;
21 civil engineering technicians; peripheral edp equipment
22 operators; insurance clerks, medical, electrical and
23 electronic technicians; occupational therapists; surveyor
24 helpers; credit clerks, banking and insurance; physical
25 therapists; employment interviewers; mechanical engi-
26 neers; mechanical engineering technicians; and com-
27 pression and injection mold machine operators.

28 (d) The chief administrative officer of each agency in
29 cooperation with the director or his designee, shall
30 establish procedures for the coordination of apprentice-
31 ship programs developed in accordance with this
32 section.

33 (e) Subject to the approval of the director and the
34 procedures established, each participating agency shall
35 determine the location and positions in which apprent-
36 iceships are to be established.

37 (f) The director, or his designee, shall make an annual
38 report to the Legislature and shall include in such
39 report the following:

40 (1) A review of the development and operation of
41 apprenticeship programs;

42 (2) The current list of apprenticeable classifications;

43 (3) A summary of the agencies and types of positions
44 involved;

45 (4) A summary of registered apprenticeships;

46 (5) The number of persons who applied for apprent-
47 iceship positions under this section;

48 (6) The number of persons accepted into the apprent-
49 iceship programs established in accordance with this
50 section;

51 (7) The number of persons who successfully completed
52 and received a certificate of completion from the United
53 States department of labor, bureau of apprenticeship
54 and training;

55 (8) The number of persons who failed to complete
56 apprenticeships in accordance with this section;

57 (9) The number of persons who remain employed after
58 successfully completing apprenticeships; and

59 (10) A summary of characteristics of applicants and
60 participants in the program deemed pertinent to the
61 director.

62 (g) The recruitment, selection and training of apprent-
63 ices during their apprenticeship shall be without
64 discrimination because of race, color, religion, national
65 origin or sex. The division will take affirmative action
66 to provide equal opportunity in apprenticeship pro-
67 grams and will operate the program to assure equal
68 employment in apprenticeship.

69 (h) No contract between the state and a vendor,
70 whereby persons who have participated in the apprent-
71 iceship program are to be hired, may be approved by
72 the attorney general unless and until said contract
73 contains a statement that the vendor will not discrim-
74 inate in employment or public accommodation because
75 of race, religion, color, national origin, ancestry, sex,
76 age, blindness or handicap of any individual.

§29-6-17b. Advisory board for the apprenticeship program.

1 In order to better accomplish the goals of this
2 program the apprenticeship advisory board is continued
3 and reestablished. Its members shall include the
4 divisioner of labor or a designee, the divisioner of
5 finance and administration or a designee, the state
6 superintendent of the department of education or a
7 designee, two employees of the state who are covered
8 under the civil service system, and one private citizen,
9 with the employee and citizen members to be appointed
10 by the governor. The employees and the private citizen
11 members shall serve without compensation for two
12 years, after which they may be reappointed. The
13 chairman of the board shall be elected by the board as
14 a whole.

15 The apprenticeship advisory board shall meet at least
16 semiannually, at the call of the chairman, for the
17 purpose of receiving, reviewing and evaluating reports
18 from the director on the achievements and deficiencies
19 of the program. The apprenticeship advisory board may
20 seek the advice and counsel from appropriate members
21 of the United States department of labor who may be
22 knowledgeable about such apprenticeship programs,
23 and may also prepare written recommendations to the
24 director, secretary, or governor on ways to improve the
25 apprenticeship program.

§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
2 demoted or dismissed from any position in the classified

3 service or in any way favored or discriminated against
4 with respect to such employment because of his political
5 or religious opinions or affiliations or race; but nothing
6 herein shall be construed as precluding the dismissal of
7 any employee who may be engaged in subversive
8 activities or found disloyal to the nation.

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

12 (c) No person shall use or promise to use, directly or
13 indirectly, any official authority or influence, whether
14 possessed or anticipated, to secure or attempt to secure
15 for any person an appointment or advantage in appoint-
16 ment to a position in the classified service, or an increase
17 in pay or other advantage in employment in any such
18 position, for the purpose of influencing the vote or
19 political action of any person or for any consideration.

20 (d) No employee in the classified service or member
21 of the board or the director shall, directly or indirectly,
22 solicit or receive any assessment, subscription or
23 contribution, or perform any service for any political
24 party, committee or candidate for compensation, other
25 than for expenses actually incurred, or in any manner
26 take part in soliciting any such assessment, subscription,
27 contribution or service of any employee in the classified
28 service.

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

31 (1) Use his official authority or influence for the
32 purpose of interfering with or affecting the result of an
33 election or a nomination for office;

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

39 (3) Be a candidate for any national or state paid public
40 office or court of record; or hold any paid public office;
41 or be a candidate or delegate to any state or national

42 political party convention, a member of any national,
43 state or local committee of a political party, or a
44 financial agent or treasurer within the meaning of the
45 provisions of section three, four or five-e, article eight,
46 chapter three of this code. Other types of partisan or
47 nonpartisan political campaigning and management not
48 inconsistent with the provisions of this subdivision and
49 with the provisions of subsection (d) of this section, shall
50 be permitted.

51 (f) Political participation pertaining to constitutional
52 amendments, referendums, approval of municipal
53 ordinances or activities shall not be deemed to be
54 prohibited by the foregoing provisions of this section.

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

§29-6-21. Acts prohibited.

1 (a) No person shall make any false statement, certifi-
2 cate, mark, rating or report with regard to any test,
3 certification or appointment made under any provisions
4 of this article or in any manner commit or attempt to
5 commit any fraud preventing the impartial execution of
6 this article and the rules.

7 (b) No person shall, directly or indirectly, give,
8 render, pay, offer, solicit or accept any money, or other
9 valuable consideration for or on account of any certifi-
10 cation, appointment, proposed appointment, promotion
11 or proposed promotion to, or any advantage in, a position
12 in the classified service.

13 (c) No employee of the division, examiner, or other
14 person shall defeat, deceive or obstruct any person in his
15 right to examination, eligibility, certification or appoint-
16 ment under this article, or furnish to any person any
17 special or secret information for the purpose of affecting
18 the rights or prospects of any person with respect to
19 employment in the classified service.

§29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.

1 (a) Appropriations shall be made from the general
2 fund to the division of personnel to meet the cost of
3 administering the provisions of this article.

4 (b) The director shall maintain accurate records
5 reflecting the cost of administering the provisions of this
6 article.

7 (c) The division is authorized and directed to accept
8 on behalf of the state any grant or contribution, federal
9 or otherwise, made to assist in meeting the cost of
10 carrying out the purposes of this article.

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

1 (a) General implementation is to be completed no later
2 than twelve months following the effective date of this
3 article.

4 (b) There is hereby created an implementation task
5 force to assist in the general implementation of this
6 article and the establishment of the division. The task
7 force shall consist of twelve members and the director
8 of personnel. Task force members shall be appointed by
9 the governor.

10 (c) The director shall provide a report to the secretary
11 of the department of administration, who shall then,
12 within one year from the effective date of this article,
13 report to the governor and Legislature on the progress
14 of the implementation of this article.

Enr. Com. Sub. for H. B. 2665] 30

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Fredrick S. Parks
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Judd C. Willis
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Sam D. Tucker
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *27th*
day of *April*, 1989.

Yastou Caperton
Governor

PRESENT

GOVERNOR

Date 4/21/89

Time 2:55 JLC