WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED

Com. Jub. for
HOUSE BILL No. 2665

(By Mr. Speaker, Mr. Chambers, and R. Bush)
[By Request of the Executive]

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Passed........................................April 8, 1989

In Effect......................................July 1, 1989

Passage
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article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article two, chapter five-f be amended and reenacted; that sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve,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.

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

(5) Reorganize internal functions or operations;

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

(7) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligating 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 heretofore granted by the Legis-
lature 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;

(8) 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
not exceed or be interpreted as authority to exceed the
powers heretofore 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) Conduct internal audits;

(10) Supervise internal management;

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

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

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

(14) Take any other action involving or relating to
internal management not otherwise prohibited by law.
(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies, and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

1. The elimination, reduction and restrictions in the use of the state's vehicle or other transportation fleet;
2. The elimination, reduction and restrictions in the preparation of state government publications, including annual reports, informational materials, and promotional materials;
3. The termination or renegotiation of terms contained in lease agreements between the state and private sector for offices, equipment and services;
4. The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;
5. The adoption of revised procurement practices to facilitate cost effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and
6. The computerization of the functions of the state agencies and boards.

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

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

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

(a) “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;

(b) “Agency” means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

(c) “Appointing authority” means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt
(d) “Board” means the state personnel board created by section six of this article;

(e) “Class” or “class of positions” means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

(f) “Classification plan” means the plan by which positions in the classified service and classified-exempt service have been allocated by class;

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

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

(i) “Classify” means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(j) “Director” means the head of the division of personnel as appointed by section seven of this article;

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

(l) “Division” means the division of personnel herein created;

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

(n) “Position” means a particular job which has been classified based on specifications;
(o) "Secretary" means the secretary of the department of administration created in section two, article one, chapter five-f of this code;

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

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

§29-6-3. Classified service.

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

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

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

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

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

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

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

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

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

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

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

(7) All policymaking positions;

(8) Patients or inmates employed in state institutions;

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

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

(11) County road supervisors employed by the department of highways or their successors;

(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for ninety days or less during a working year;
(13) Members and employees of the board of regents or its successor agencies;

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

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

The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the governor including all employees assigned to the executive mansion, as well as any persons appointed by the governor to fill policymaking positions and county road supervisors or their successors, in that such offices or positions are confidential in character and/or require their holders to act as advisors to the governor or his appointees, to formulate and implement the policies and goals of the governor of his appointees, or to help the governor or his appointees communicate with and explain their policies and views to the public, the Legislature, and the press.

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

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

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

(1) Applicant services;

(2) Classification and compensation;
(3) Management development and training;

(4) Program evaluation and payroll;

(5) Employee services;

(6) Employee relations; and

(7) Administrative and staff services.

Each section shall be under the control of a section chief to be appointed by the director who shall be qualified by reason of exceptional training and experience in the field of activities of the respective section. The director has authority to establish such additional sections as may be determined necessary to carry out the purpose of this article.

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

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

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

(c) Citizen members of the board shall each be paid one hundred dollars for each day devoted to the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.
(d) The board shall elect one of its members as chairperson and shall meet at such time and place as shall be specified by the call of the chairman. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting period.

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

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

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

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

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

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

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

(b) The director shall:

(1) Consistent with the provisions of this article administer the operations of the division, allocating the
(13) Enr. Com. Sub. for H.B. 2665

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

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

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

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

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

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

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

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

(9) Establish an internship program;

(10) Assist the governor and secretary of the department of administration in general work force planning and other personnel matters;

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

(12) Assess cost for special or other services;

(13) Recommend rules to the board for implementation of this article; and

(14) Conduct schools, seminars or classes regarding
§29-6-8. Duties of board generally.

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

1. Represent the public interest in the improvement of personnel administration in the classified service.
2. Advise the governor, the secretary, and the director on problems concerning personnel administration.
3. Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in the classified service.
4. Make any investigation which it may consider desirable concerning the administration of personnel in the classified service and make recommendations to the director with respect thereto.
5. Approve the budget as prepared by the director for administration of this article before submission to the division of finance and administration.

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

(a) The civil service commission is hereby abolished. All duties and responsibilities heretofore imposed upon the civil service commission are hereby imposed upon the state personnel board, and all duties and responsibilities heretofore imposed upon the director of the civil service system are hereby imposed upon the director of the division of personnel. Except as used in this section, the words "civil service commission" or "commission," when used in this article, shall refer to and mean the state personnel board. Whenever reference is made to the director of the civil service commission, the power...
or duty prescribed shall apply to the director of the
division of personnel.

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

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

(d) The abolishment of the civil service commission
and the creation of the division of personnel shall in no
way hinder any ongoing programs, benefits, litigation, or grievance procedures. Employees in the classified service who have gained permanent status as of the effective date of this article will not be subject to further qualifying examination by reason of any transfer required by the provisions of this section, except when they wish to qualify for promotion. Nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state to the procedures and protections set forth in sections ten and ten-a of this article, except as provided in subsection (d), section two, article two, chapter five-f of this code.

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

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

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

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

(a) There is hereby created the state personnel advisory council, which consists of eleven members appointed by the governor. Six members shall be classified employees and two, classified-exempt employees. Of the remaining three members, one shall be appointed from a list of three persons recommended by the American federation of state, county, and municipal employees; one, from a list of three persons recommended by the communication workers of America; and one, from a list of three persons recommended by district 1199, national union of hospital and health care
employees, AFL-CIO. Members of the council shall serve for a term concurrent with that of the governor.

(b) The state personnel advisory council shall:

(1) Advise the director and the board in the development of comprehensive policies and programs for the improvement of personnel administration in the state;

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

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

(c) Members of the council shall receive no compensation, but shall be reimbursed for their actual and necessary expenses.

§29-6-10. Rules of division.

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

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. The position classification plan for classified-exempt service shall become effective not later than the first day of July, one thousand nine hundred seventy-nine. Except for persons employed by the board of regents, all persons receiving compensation in the form of a wage or salary, funded either in part or in whole by the state, shall be included in either the position classification plan for classified service or classified-exempt service. After each such classification plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the
classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

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

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

An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten
points, rather than five points as aforesaid, upon successful completion of any examination.

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

(5) For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee’s seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform any other job duties held by less senior employees within that agency in the job class, or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as hereinafter provided.

(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his place on the recall list for the same period of time as his seniority on the date of his layoff, or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous
thereto. Any laid-off employee who is eligible for a
vacant position shall be notified by certified mail of the
vacancy. It shall be the responsibility of the employee
to notify the agency of any change in his address.

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

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

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

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

(11) For keeping records of performance of all
employees in the classified service, which service
records may be considered in determining salary
increases and decreases provided in the pay plan; as a
factor in promotion tests; as a factor in determining the
order of layoffs because of lack of funds or work and
in reinstatement; and as a factor in demotions, discharges and transfers.

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

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

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

The provisions of this section are subject to any modifications contained in chapter five-f of this code. The board may include in the rules provided for in this article such provisions as are necessary to conform to
§29-6-11. Duty to furnish facilities for division's use. 

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the division the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this article. The division shall pay to a municipality or political subdivision the reasonable cost 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.

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

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

(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this article and the rules, regulations and orders thereunder. The
The director may for proper cause withhold certification from an entire payroll or from any specific item or items thereon. The director may, however, provide that certification of payrolls may be made once every six months, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

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

§29-6-16. Records of division.

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

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

(a) Subject to the approval of the board the director may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the division to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreements shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements. Subject to the approval of the board, the director may enter into an agreement with the state department of health for the inclusion of personnel of local health departments under the classified service system established by this article.
(b) The director may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this article.

§29-6-17a. Apprenticeship program.

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

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

(c) The director or his designee, in cooperation with the participating appointing authorities within each agency, shall develop and annually revise by the thirty-first day of December a list of employment classifications appropriate for apprenticeship training, which may include, but not be limited to, the following classifications: Computer service technicians; legal assistants; computer systems analysts; computer programmers; computer operators; office machine repairers; physical therapy assistants; electrical engineers; civil engineering technicians; peripheral edp equipment operators; insurance clerks, medical, electrical and electronic technicians; occupational therapists; surveyor helpers; credit clerks, banking and insurance; physical therapists; employment interviewers; mechanical engineers; mechanical engineering technicians; and compression and injection mold machine operators.

(d) The chief administrative officer of each agency in cooperation with the director or his designee, shall establish procedures for the coordination of apprenticeship programs developed in accordance with this section.
(e) Subject to the approval of the director and the procedures established, each participating agency shall determine the location and positions in which apprenticeships are to be established.

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

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

(2) The current list of apprenticeable classifications;

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

(4) A summary of registered apprenticeships;

(5) The number of persons who applied for apprenticeship positions under this section;

(6) The number of persons accepted into the apprenticeship programs established in accordance with this section;

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

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

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

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

(g) The recruitment, selection and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin or sex. The division will take affirmative action to provide equal opportunity in apprenticeship programs and will operate the program to assure equal employment in apprenticeship.
(h) No contract between the state and a vendor, whereby persons who have participated in the apprenticeship program are to be hired, may be approved by the attorney general unless and until said contract contains a statement that the vendor will not discriminate in employment or public accommodation because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual.

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

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

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

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified
service or in any way favored or discriminated against
with respect to such employment because of his political
or religious opinions or affiliations or race; but nothing
herein shall be construed as precluding the dismissal of
any employee who may be engaged in subversive
activities or found disloyal to the nation.

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

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

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

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

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

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

(3) Be a candidate for any national or state paid public
office or court of record; or hold any paid public office;
or be a candidate or delegate to any state or national
political party convention, a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e, article eight, chapter three of this code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section, shall be permitted.

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

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


(a) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, or other valuable consideration for or on account of any certification, appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the division, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this article, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.
§29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.

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

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

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

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

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

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

(c) The director shall provide a report to the secretary of the department of administration, who shall then, within one year from the effective date of this article, report to the governor and Legislature on the progress of the implementation of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor
Date 4/21/89
Time 2:55 PM