WEST VIRGINIA LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2005

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ENROLLED

House Bill No. 407

(By By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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Passed September 13, 2005

In Effect from Passage
AN ACT to amend and reenact §SF-2-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section designated §5F-2-7, relating to the power and authority of department secretaries to transfer employees between departments; establishing guidelines for transfer of employees; protecting rights of transferred employees; requiring annual reports; and requiring promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §5F-2-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section designated §5F-2-7, 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.
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(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

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

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

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

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

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

(6) Reorganize internal functions or operations;

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

(8) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligation of public funds as authorized by law: Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(10) Conduct internal audits;
(11) Supervise internal management;

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

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

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

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

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

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

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

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;
(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

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

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

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

(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections 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.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over
programs which are payors for prescription drugs, including but not limited to, the Public Employees Insurance Agency, the Children’s Health Insurance Program, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, the Workers’ Compensation Fund, state colleges and universities, public hospitals, state or local institutions including nursing homes and veteran’s homes, the Division of Rehabilitation, public health departments, the Bureau of Medical Services and other programs that are payors for prescription drugs, shall cooperate with the Office of the Pharmaceutical Advocate established pursuant to section four, article sixteen-d, chapter five of this code for the purpose of purchasing prescription drugs for any program over which they have authority.

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

(a) A department secretary may enter into a memorandum of understanding with another department secretary to transfer a permanent state employee from a position that is to be consolidated or eliminated, to a funded vacant position in another Department, in accordance with the provisions of this section and the law. To support the transfer of the employee, a department secretary may also transfer furniture and equipment, except motor vehicles and any assets purchased by designated funds for specific uses and purposes, the removal of which is prohibited by law or would jeopardize federal funds, grants or other funding sources.

(b) The transferred employee shall receive the same level of benefits and rate of compensation or higher, and shall retain the same level of seniority.

(c) An employee shall be given notice of the proposed transfer at least fifteen days prior to the transfer. During the notice period, an affected employee may agree to be voluntarily transferred.
(d) If an employee does not volunteer to be transferred, then an involuntary transfer may be ordered. An involuntary transfer shall begin with the least senior permanent employee who qualifies for the position.

(e) A classified employee who is transferred shall retain his or her classified status: Provided, That any transfer shall be made in accordance with the law.

(f) An involuntary transfer may be rejected by an employee if the involuntary transfer would require the employee to travel thirty miles or more, one way, than the distance the employee currently travels from his or her current job site.

(g) An employee who qualifies for and chooses to reject a transfer shall be laid off in accordance with the law.

(h) Nothing in this section shall abridge any other rights provided by law.

(i) Prior to the thirty-first day of December, two thousand five, the Division of Personnel shall promulgate an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section.

(j) The Division of Personnel is authorized to promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section.

(k) Annually, on or before the first day of January, the Division of Personnel shall report to the Joint Committee on Government and Finance, on all interdepartmental employee transfers, including but not limited to, voluntary and involuntary transfers, furniture and equipment transfers, and the Departments involved in the transfers.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

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 28th day of September, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 9/10/05

Time 4:25 pm