

FILED

2005 SEP 28 P 4: 20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FOURTH EXTRAORDINARY SESSION, 2005



# ENROLLED

## House Bill No. 407

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



Passed September 13, 2005

In Effect from Passage

FILED

2005 SEP 28 P 4: 20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

## **H. B. 407**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)  
[BY REQUEST OF THE EXECUTIVE]

[Passed September 13, 2005; in effect from passage.]

AN ACT to amend and reenact §5F-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.**

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

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

8 (2) Cause the various agencies and boards to be operated  
9 effectively, efficiently and economically, and develop goals,  
10 objectives, policies and plans that are necessary or desirable for  
11 the effective, efficient and economical operation of the depart-  
12 ment;

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

16 (4) Transfer permanent state employees between depart-  
17 ments in accordance with the provisions of section seven of this  
18 article;

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

22 (6) Reorganize internal functions or operations;

23 (7) Formulate comprehensive budgets for consideration by  
24 the Governor, and transfer within the department funds appro-  
25 priated to the various agencies of the department which are not  
26 expended due to cost savings resulting from the implementation  
27 of the provisions of this chapter: *Provided*, That no more than  
28 twenty-five percent of the funds appropriated to any one agency  
29 or board may be transferred to other agencies or boards within  
30 the department: *Provided, however*, That no funds may be  
31 transferred from a special revenue account, dedicated account,

32 capital expenditure account or any other account or funds  
33 specifically exempted by the Legislature from transfer, except  
34 that the use of appropriations from the State Road Fund  
35 transferred to the Office of the Secretary of the Department of  
36 Transportation is not a use other than the purpose for which the  
37 funds were dedicated and is permitted: *Provided further*, That  
38 if the Legislature by subsequent enactment consolidates  
39 agencies, boards or functions, the appropriate secretary may  
40 transfer the funds formerly appropriated to the agency, board or  
41 function in order to implement consolidation. The authority to  
42 transfer funds under this section shall expire on the thirtieth day  
43 of June, two thousand five;

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

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

65 (10) Conduct internal audits;

66 (11) Supervise internal management;

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

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

77 (14) Delegate to administrators the duties of the secretary  
78 as the secretary may deem appropriate from time to time to  
79 facilitate execution of the powers, authority and duties dele-  
80 gated to the secretary; and

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

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

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

91 (2) The elimination, reduction and restriction of state  
92 government publications, including annual reports, informa-  
93 tional materials and promotional materials;

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

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

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

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

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

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

129 (e) Notwithstanding any other provision of this code to the  
130 contrary, the secretary of each department with authority over

131 programs which are payors for prescription drugs, including but  
132 not limited to, the Public Employees Insurance Agency, the  
133 Children's Health Insurance Program, the Division of Correc-  
134 tions, the Division of Juvenile Services, the Regional Jail and  
135 Correctional Facility Authority, the Workers' Compensation  
136 Fund, state colleges and universities, public hospitals, state or  
137 local institutions including nursing homes and veteran's homes,  
138 the Division of Rehabilitation, public health departments, the  
139 Bureau of Medical Services and other programs that are payors  
140 for prescription drugs, shall cooperate with the Office of the  
141 Pharmaceutical Advocate established pursuant to section four,  
142 article sixteen-d, chapter five of this code for the purpose of  
143 purchasing prescription drugs for any program over which they  
144 have authority.

**§5F-2-7. Interdepartmental transfer of permanent state employ-  
ees.**

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

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

15 (c) An employee shall be given notice of the proposed  
16 transfer at least fifteen days prior to the transfer. During the  
17 notice period, an affected employee may agree to be voluntarily  
18 transferred.

19 (d) If an employee does not volunteer to be transferred, then  
20 an involuntary transfer may be ordered. An involuntary transfer  
21 shall begin with the least senior permanent employee who  
22 qualifies for the position.

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

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

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

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

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

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

43 (k) Annually, on or before the first day of January, the  
44 Division of Personnel shall report to the Joint Committee on  
45 Government and Finance, on all interdepartmental employee  
46 transfers, including but not limited to, voluntary and involun-  
47 tary transfers, furniture and equipment transfers, and the  
48 Departments involved in the transfers.

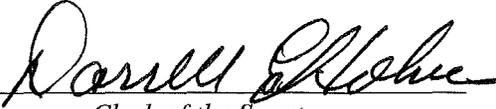
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

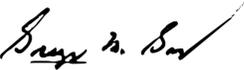
  
Chairman Senate Committee

  
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 28<sup>th</sup>  
day of September, 2005.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 9/16/05

Time 4:25 pm