WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 442

(Senators Bowman, Jenkins, Plymale, Minard, McKenzie, White and Hunter, original sponsors)

[Passed March 7, 2007; in effect from passage.]
AN ACT to repeal §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended; to repeal §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code; to amend and reenact §5-5-4 and §5-5-5 of said code; to amend and reenact §5B-2-5 of said code; to amend and reenact §5F-2-1 of said code; to amend said code by adding thereto a new
article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; to amend said code by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; to amend and reenact §11-10A-8 of said code; to amend and reenact §18A-2-8 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-7-4 of said code; to amend and reenact §21-5E-4 of said code; to amend and reenact §31-20-27 of said code; to amend and reenact §33-48-2 of said code; and to amend and reenact §49-5E-5a of said code, all relating to state employees grievance procedures; establishing a new West Virginia public employees grievance procedure; discontinuing the Education and State Employees Grievance Board; creating the West Virginia Public Employees Grievance Board with five members appointed by the Governor; giving the board new powers, duties, rule-making authority and data collection responsibilities; creating a uniform grievance procedure with three levels for certain public employees; clarifying definitions and general grievance procedures; prohibiting supervisors from representing employees they evaluate; clarifying and reorganizing general provisions; increasing time frames in grievance procedure; defining default provisions; eliminating laches and defining back pay; establishing that employees may be represented at conferences, hearings and meetings at any step of the procedure; clarifying the procedure for conferences and hearings; removing hearing examiners from the grievance procedure; and making technical corrections to affected sections of the code.

Be it enacted by the Legislature of West Virginia:

That §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended, be repealed; that §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code be repealed; that §5-5-4 and §5-5-5 of said code be amended and reenacted; that §5B-2-5 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; that said code be amended by adding
thereto a new article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; that said code be amended by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; that §11-10A-8 of said code be amended and reenacted; that §18A-2-8 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-7-4 of said code be amended and reenacted; that §21-5E-4 of said code be amended and reenacted; that §22C-7-2 of said code be amended and reenacted; that §31-20-27 of said code be amended and reenacted; that §33-48-2 of said code be amended and reenacted; and that §49-5E-5a of said code be amended and reenacted all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources pay equity salary adjustment.

1 The Legislature hereby directs that a pay equity salary adjustment be provided for employees of the various agencies of the Department of Health and Human Resources. This salary adjustment shall be provided from the funding appropriated to the department in the fiscal year two thousand and may not be construed to require additional appropriations from the Legislature. In the event any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this section control. In determining the pay equity salary adjustments, the department may give consideration to employee tenure, relevant average salaries and such other factors as may be determined relevant by the secretary. Due to the limits of funding, the results of the pay equity salary adjustments shall not be subject to the provisions of article two, chapter six-c of this code. The provisions of this section are rehabilitative in nature and it is the
specific intent of the Legislature that no private cause
of action, either express or implied, shall arise pursuant
to the provisions or implementation of this section.

§5-5-5. Pay equity adjustment.

The Legislature hereby directs that a gender-based
pay equity salary adjustment be provided to public
employees as determined by the Secretary of the
Department of Administration, based on
recommendations of the equal pay commission, within
the limitations provided by this section. This salary
adjustment shall be provided from the funding
appropriated to the Department of Administration,
office of the secretary, for purposes of a “pay equity
reserve” in the fiscal year two thousand two and may
not be construed to require additional appropriations
from the Legislature. If any provision of this section
conflicts with any rule, policy or provision of this code,
the provisions of this section control. Because the
provisions of this section are rehabilitative in nature,
the results of the pay equity salary adjustments are not
subject to the provisions of article two, chapter six-c of
this code. Further, it is the specific intent of the
Legislature that no private cause of action, either
express or implied, is created by or otherwise arises
from the enactment, provisions or implementation of
this section.

CHAPTER 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-5. Economic development representatives.

(a) The director may employ economic development
representatives to be paid a base salary within
legislative appropriations to the West Virginia
Development Office, subject to provisions set forth by
the council in its reorganization plan and applicable
contract provisions pursuant to section four of this
article. Economic development representatives may
receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the West Virginia Development Office pursuant to the provisions of section four of this article. The director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to section four of this article.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the West Virginia Development Office are not subject to the procedures and protections provided by articles six and six-a, chapter twenty-nine of this code. Any employee of the West Virginia Development Office on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of article six, chapter twenty-nine with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in article two, chapter six-c and article six, chapter twenty-nine of this code.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

(1) Building Commission provided in article six, chapter five of this code;
(2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;

(3) Governor's Mansion Advisory Committee provided for in article five, chapter five-a of this code;

(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(5) West Virginia Public Employees Grievance Board provided for in article three, chapter six-c of this code;

(6) Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

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

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:
(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:
(A) Division of Unemployment Compensation;
(B) Division of Employment Service;
(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and
(8) Division of Energy provided in article two-f, chapter five-b of this code.
(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.
(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.
(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:
(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;
(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;
(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;
(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;
(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;
(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

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

(1) Library Commission provided in article one, chapter ten of this code;

(2) Educational Broadcasting Authority provided in article five, chapter ten of this code;

(3) Division of Culture and History provided in article one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

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

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;
(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

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

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter
(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

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

(1) Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;
(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

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

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.
(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(l) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decisionmakers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(m) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(n) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.
CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

(a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective and consistent manner will maintain good employee morale, enhance employee job performance and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in chapter eighteen or eighteen-a of this code.

(d) Effective the first day of July, two thousand seven, any reference in this code to the education grievance procedure, the state grievance procedure, article twenty-nine, chapter eighteen of this code or article six-a, chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the appropriate grievance procedure pursuant to this article.

(e) Any grievance proceeding which is in process on the effective date of the enactment of this article will be completed as expeditiously as possible, and all outstanding orders for hearings must be completed by the first day of July, two thousand seven. Parties to grievances for which a hearing has not been held may, by agreement, proceed to either level two or level three.

§6C-2-2. Definitions.

For the purpose of this article and article three of this
chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.

(d) (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to article two chapter fifteen of this code, but does include civilian employees hired by the Superintendent of the State Police. "Employee" does not mean an employee of a constitutional officer unless he or she is covered under
the civil service system, an employee of the Legislature, or a patient or inmate employed by a state institution.

(e) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer and membership criteria of the organization.

(f) "Employer" means a state agency, department, board, commission, college, university, institution, state board of education, department of education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(g) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination, unless the discrimination is related to the actual job responsibilities of the employee or agreed to in writing by the employee;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment, including repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the demeanor expected by law, policy and profession, or favoritism, including unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another similarly situated employee; or

(iv) Any action, policy or practice constituting a substantial detriment to or interference with the
effective job performance of the employee, or the health
and safety of the employee.

(2) "Grievance" does not mean any pension matter or
other issue relating to public employees insurance in
accordance with article sixteen, chapter five of this
code, retirement or any other matter in which the
authority to act is not vested with the employer.

(h) "Grievant" means an employee or group of
similarly situated employees filing a grievance.

(i) "Party" and "parties" mean the grievant, employer
and the Director of the Division of Personnel for state
government employee grievances. The Division of
Personnel shall not be a party to grievances involving
higher education employees.

(j) "Representative" means any employee
organization, fellow employee, legal counselor or other
person designated by the grievant as the grievant's
representative and may not include a supervisor who
evaluates the grievant.


1 (a) *Time limits.* —

2 (1) An employee shall file a grievance within the time
3 limits specified in this article.

4 (2) The specified time limits may be extended to a date
certain by mutual written agreement, and shall be
extended whenever a grievant is not working because of
accident, sickness, death in the immediate family or
other cause for which the grievant has approved leave
from his or her employment.

10 (b) *Default.* —

11 (1) The grievant prevails by default if a required
response is not made by the employer within the time
limits established in this article, unless the employer is
prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within ten days of the default, the grievant may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision one of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. In making a determination regarding the remedy, the administrative law judge shall determine whether the remedy is proper, available and not contrary to law.

(3) If the administrative law judge finds that the employer has a defense to the default as permitted by subdivision (1) of this subsection, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default, or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.

(c) Defenses and limitations. —

(1) Untimeliness. — Any assertion by the employer that the filing of the grievance at level one was untimely shall be asserted by the employer at or before level two.

(2) Back Pay. — A one-year statute of limitations applies to the recovery of back pay. In the case of a willful violation by the employer in which it can be shown by a preponderance of the evidence that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, an eighteen-month statute of limitations applies. Further, a grievant’s right to back pay tolls from the time that the grievant has actual or constructive knowledge of his or her right to back pay.
(3) **Statutory defense.** — If the employer intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to the grievant and his or her representative.

(d) **Withdrawal and reinstatement of grievance.** — An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the board. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the board. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) **Consolidation and Groups of Similarly Situated Employees.** —

(1) Grievances may be consolidated at any level by agreement of all parties, or at the discretion of the administrative law judge.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees, but any similarly situated employee shall indicate in writing his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the level one hearing required in section four of this article.

(f) **Intervention.** — Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) **Representation.** — An employee may designate a representative who may be present at any step of the
procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(h) Reprisal. — No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in the grievance procedure by reason of his or her participation. Reprisal or retaliation constitutes a grievance, and any person held responsible is subject to disciplinary action for insubordination. Further, any supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(i) Forms. — The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents and provide them to chief administrators to make available to any employee upon request.

(j) Discovery. — The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party. All documents submitted become part of the record.

(k) Conferences and Hearings. —

(1) Impartiality. — The administrative law judge shall conduct all level three hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(2) Closed Conferences and Hearings. — All conferences and hearings shall be conducted in private. Hearings may be public at level three at the discretion of the administrative law judge.

(3) Evidence. — All parties may present supportive or corroborative evidence and argument with respect to the grievance at a conference or hearing. Formal rules of evidence do not apply, but parties are bound by the
(4) **Witnesses.** — At level one, the chief administrator may call witnesses and may allow parties to call witnesses during a conference or hearing upon request. The parties have the right to call, examine and cross-examine witnesses during any hearing. Administrative law judges may issue subpoenas for witnesses, limit witnesses, administer oaths and may exercise other powers granted by rule or law. No employee may be compelled to testify against himself or herself in a grievance hearing.

(5) **Notice.** — Reasonable notice of a conference or hearing shall be sent at least five days prior to the hearing to all parties and their representatives and shall include the date, time and place of the hearing. If an employer causes a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.

(6) **Location.** — All proceedings shall be at a convenient place accessible to all parties and the location of the level three hearing shall be set by the administrative law judge.

(7) **Date and Time.** — Conferences and hearings shall be scheduled within the time frames established at a reasonable time of day in accommodation to the parties' work schedules. Disagreements shall be decided by the board or the administrative law judge.

(8) **Record.** — Conferences are not required to be recorded, but all evidence submitted and the decision become part of the record. All the testimony and evidence at a hearing shall be recorded by mechanical means, and a copy of the recording provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a hearing to a requesting party or the court for a
mandamus or appellate proceeding.

(l) **Grievance decisions.** —

(1) Prior to a decision, any party may propose findings of fact and conclusions of law.

(2) Decisions rendered at all levels of the grievance procedure shall be dated, in writing, setting forth the decision or decisions and the reasons for the decision, and transmitted to the board, the employer and the grievant within the time limits prescribed. If the grievant is denied the relief sought, the decision shall include the procedure for the next level of appeal for the grievant.

(m) **Preparation time.** —

(1) The grievance shall be processed during regular working hours with minimal interference with the normal operations of the employer and schedule of the employee.

(2) The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours for grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(3) In addition to actual time spent in grievance conferences and hearings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee.

(4) The grievant and an employee representative shall have access to the employer's equipment for purposes of
preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for non-work purposes.

(5) Disagreements regarding preparation time shall be decided by the board or the presiding administrative law judge.

(n) Grievance files. —

(1) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have the grievant's identity removed from any files kept by the employer one year following the conclusion of the grievance.

(o) Number of Grievances. — The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(p) Procedures and Rules. — The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the State Administrative Procedures Act under chapter twenty-nine-a of this code for all matters relating to the grievance procedure.

§6C-2-4. Grievance procedural levels.

(a) Level one: Chief Administrator. —

(1) Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written

8 grievance with the chief administrator stating the
9 nature of the grievance and the relief requested and
10 request either a conference or a hearing. The employee
11 shall also file a copy of the grievance with the board.
12 State government employees shall further file a copy of
13 the grievance with the Director of the Division of
14 Personnel, who may participate at any level in person or
15 by a designee.

16 (2) The chief administrator shall hold the conference
17 or hearing, as requested by the grievant, within ten days
18 of receiving the grievance and issue a written decision
19 within fifteen days of the conference or hearing.

20 (3) An employee may proceed directly to level three
21 upon the agreement of the employee and the chief
22 administrator or when discharged, suspended without
23 pay or demoted or reclassified resulting in a loss of
24 compensation or benefits.

25 (b) Level two: Alternative dispute resolution. —

26 (1) Within ten days of receiving an adverse written
27 decision at level one, the grievant shall file a written
28 request for mediation, private mediation or mediation-
29 arbitration with the board if the grievant desires to
30 continue the grievance process.

31 (A) Mediation. — The board shall schedule the
32 mediation between the parties within twenty days of the
33 request. Mediation shall be conducted by an
34 administrative law judge pursuant to standard
35 mediation practices and board procedures at no cost to
36 the parties. Parties may be represented and shall have
37 the authority to resolve the dispute. Agreements
38 reached through mediation shall be documented in
39 writing within fifteen days. Agreements are binding
40 and enforceable in this state by a writ of mandamus.

41 (B) Private Mediation. — The parties may agree in
42 writing to retain their choice of a private mediator and
43 share the cost. The mediator shall schedule the
44 mediation within twenty days of the written request
45 and shall follow standard mediation practices and any
46 applicable board procedures. Parties may be
47 represented and shall have the authority to resolve the
48 dispute. Agreements reached through mediation shall
49 be documented in writing within fifteen days.
50 Agreements are binding and enforceable in this state by
51 a writ of mandamus.

(C) Mediation-arbitration. — The parties may agree in
writing to participate in mediation-arbitration. The
board shall schedule the mediation-arbitration between
the parties within twenty days of the request.
Mediation-arbitration shall be conducted by an
administrative law judge pursuant to standard
mediation and arbitration practices and board
procedures, at no cost to the parties. In the event the
mediation does not result in a resolution, the mediator
may become an arbitrator and proceed to decide the
matter. The parties may be represented and may
resolve the dispute. Agreements reached through
mediation and decisions issued through arbitration are
to be documented in writing within fifteen days, and are
binding and enforceable in this state by a writ of
mandamus.

(2) Neutral Evaluation. — Within fifteen days of the
conclusion of an unsuccessful mediation or mediation-
arbitration, the administrative law judge serving as the
mediator or mediator-arbitrator may provide a written
summary to the parties as a neutral evaluator stating
the issues presented, and issue a scheduling and
discovery order that is binding upon the parties in
preparation for level three.

(c) Level three: Adjudication. —

(1) Within ten days of receiving a written report
stating that alternative dispute resolution at level two
was unsuccessful, the grievant may file a written appeal
with the employer and the board requesting a hearing
and adjudication on the grievance. The administrative
law judge shall schedule the hearing, and any other
proceedings or deadlines, within a reasonable time in
consultation with the parties. State government employees shall also serve a copy of the appeal upon the Director of the Division of Personnel, or his or her designee, who may appear at the hearing and submit oral or written evidence upon matters at issue.

(2) Both the employer and the employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The administrative law judge may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

(3) Within thirty days following the hearing, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

§6C-2-5. Enforcement and appeal.

(a) The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of Kanawha County.

(b) A party may appeal the decision of the administrative law judge on the grounds that the decision:

(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

(2) Exceeds the administrative law judge's statutory authority;

(3) Is the result of fraud or deceit;

(4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) Is arbitrary or capricious or characterized by abuse
of discretion or clearly unwarranted exercise of discretion.

c) A party shall file the appeal in the circuit court of Kanawha County within thirty days of receipt of the administrative law judge's decision. The decision of the administrative law judge is not automatically stayed upon the filing of an appeal, but a stay may be granted by the circuit court upon a separate motion for a stay.

d) The court shall review the entire record that was before the administrative law judge, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the administrative law judge, or may remand the grievance to the administrative law judge or the chief administrator for further proceedings.

§6C-2-6. Allocation of expenses and attorney's fees.

(a) Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expenses.

(b) In the event a grievant or employer appeals an adverse level three decision to the circuit court of Kanawha County, or an adverse circuit court decision to the Supreme Court of Appeals of West Virginia, and the grievant substantially prevails upon the appeal, the grievant may recover from the employer court costs and reasonable attorney's fees for the appeal to be set by the court.

§6C-2-7. Mandamus proceeding.

Any employer failing to comply with the provisions of this article may be compelled to do so by a mandamus proceeding and may be liable to a prevailing party for court costs and reasonable attorney's fees to be set by the court.

ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD.
§6C-3-1. West Virginia Public Employees Grievance Board.

(a) Effective the thirtieth day of June, two thousand seven, the Education and State Employees Grievance Board, and the employment of the hearing examiners and administrative law judges under the board, terminate.

(b) Effective the first day of July, two thousand seven, the West Virginia Public Employees Grievance Board is created as an independent entity under the Department of Administration and all references to the Education and State Employees Grievance Board in the code shall be considered to refer to the West Virginia Public Employees Grievance Board.

(c) On or before the first day of July, two thousand seven, the Governor, by and with the advice and consent of the Senate, shall appoint the following five members to the board for the following terms:

(1) One person representing the largest labor organization in the state for a term of three years;

(2) One person representing an education employee organization in the state for a term of two years;

(3) One employer representative from the executive branch for a term of two years;

(4) One employer representative from secondary or higher education for a term of three years; and

(5) One citizen member, who is not a current employee, employer or a representative of employees in a workplace in the public, educational or higher educational sector of this state, for a term of one year.

(d) After the initial appointment, the board term shall be three years.

(e) No member may serve more than two consecutive full terms and any member having served two
consecutive full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(f) A vacancy on the board shall be filled by the Governor by appointment of a like member for the unexpired term of the member whose office is vacant.

(g) The membership of the board shall represent each congressional district, with no more than two members from any one district and no more than three members may be from the same political party.

(h) Each member of the board, at the time of his or her appointment, must have been a resident of this state for a period of not less than one year immediately preceding the appointment and each member of the board shall remain a resident of this state during the appointment term.

(i) The Governor may remove any member from the board for neglect of duty, incompetency, criminal convictions or official misconduct.

(j) Any member of the board immediately and automatically forfeits his or her membership if he or she is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(k) The board shall hold at least four meetings per year. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at such time and place as designated in the call or request.

(l) The board shall designate one of its members as chairperson and one member as secretary-treasurer who shall serve at the will of the board.

(m) A majority of the members of the board constitute a quorum.
(n) Each member of the board is entitled to receive compensation and expense reimbursement as is accorded legislators in the performance of their duties.

§6C-3-2. Powers and duties of the board.

The board shall:

1. Maintain jurisdiction over procedural matters in the grievance process;

2. Employ competent administrative law judges and a chief administrative law judge and pay them commensurately with other administrative law judges in the state, who shall be:
   
   (A) Residents of the State of West Virginia;
   
   (B) Members in good standing of the West Virginia State Bar; and
   
   (C) Persons who have knowledge and legal experience regarding public and education employment law and alternative dispute resolution;

3. Provide suitable office space for the board and the administrative law judges separate from any workplace in the public, educational and higher educational sectors, so that the administrative law judges are accessible statewide;

4. Hire, discharge, set the job requirements for and fix the compensation of the director, employees and administrative law judges, who serve at the will and pleasure of the board, necessary to enforce the provisions of this article and article two of this chapter;

5. Prepare and submit an annual budget;

6. Establish and provide all forms necessary for the grievance process and make them easily accessible;

7. Establish procedures to obtain and maintain
records, outcomes and costs at each level of the grievance process;

(8) Keep accurate and complete records of its proceedings and hearings and certify the records as may be appropriate;

(9) Evaluate, on an annual basis, the grievance process, including written comment from employers, employees and employee organizations that participate in the process;

(10) Submit an annual report to the Joint Committee on Government and Finance, the Legislature and the Governor that includes a compilation of all data received regarding outcomes and costs at each level of the grievance process;

(11) File a mandamus proceeding against any employer failing to comply with the reporting requirements of this article; and

(12) Take all other actions necessary and proper to effectuate the purposes of this article.

§6C-3-3. Data collection and reporting requirements.

(a) Each employer involved in a grievance matter shall maintain the forms and all records created in the grievance process, and shall provide this information to the board in the form and manner prescribed by the board.

(b) The board shall obtain and maintain all records of grievance matters.

(c) The board shall annually report to the Joint Committee on Government and Finance, the Legislature and the Governor. The report shall contain the following:

(1) An overview of grievance-related issues;
(2) The number of grievances against each employer;

(3) Identification of each grievance by type of grievance, level of resolution and cost of the grievance, including the estimated cost of employee time to handle the grievance and actual cost of any legal time or damages paid in the resolution of the grievance;

(4) The number and type of grievances granted, denied or resolved by other means, including informal resolutions and alternative dispute resolution, and the actual or estimated cost of handling the grievance at each level of the grievance process;

(5) Any legislative recommendations for changes to the grievance process as a result of the data collected; and

(6) The caseload of each administrative law judge, the type of grievance, the number of grievances resolved and the number of decisions issued.

(d) Nothing contained in the annual report may breach the confidentiality of a party to the dispute, nor may any matter be disclosed if the disclosure may violate any provision of law.

§6C-3-4. Rule-making authority.

(a) The rules established by the Education and State Employees Grievance Board in effect on the effective date of this article that are consistent with the provisions of this article and article two of this chapter remain in effect until they are amended, modified or repealed.

(b) The board may adopt, modify, amend and repeal procedural rules promulgated in accordance with article three, chapter twenty-nine-a of this code, necessary to effectuate the provisions of this article and article two of this chapter including, but not limited to, procedures to create and distribute forms, obtain and maintain records and collect and report data.
14 (c) The board shall adopt, modify, amend, repeal and
15 enforce rules for legislative approval necessary to
16 effectuate the provisions of this article and article two
17 of this chapter, including any emergency rules, pursuant
18 to article three, chapter twenty-nine-a of this code.

§6C-3-5. Continuation of the West Virginia Public Employees
Grievance Board.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia Public Employees
3 Grievance Board shall continue to exist until the first
4 day of July, two thousand ten, unless sooner terminated,
5 continued or reestablished.

§6C-3-6. Review of the grievance procedure.

1 On or before the first day of January, two thousand
2 ten, the Joint Committee on Government and Finance
3 shall review the grievance procedure and the board,
4 evaluate its usefulness and make recommendations
5 concerning its continuation or termination.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.


1 The Office of Tax Appeals has exclusive and original
2 jurisdiction to hear and determine all:

3 (1) Appeals from tax assessments issued by the Tax
4 Commissioner pursuant to article ten of this chapter;

5 (2) Appeals from decisions or orders of the Tax
6 Commissioner denying refunds or credits for all taxes
7 administered in accordance with the provisions of
8 article ten of this chapter;

9 (3) Appeals from orders of the Tax Commissioner
10 denying, suspending, revoking, refusing to renew any
11 license or imposing any civil money penalty for
violating the provisions of any licensing law administered by the Tax Commissioner;

(4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of article ten of this chapter;

(5) Matters which the Tax Division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to article two, chapter six-c of this code; and

(6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of article two,

chapter six-c of this code, except that dismissal for the
conviction of a felony or guilty plea or plea of nolo
contendere to a felony charge is not by itself a grounds
for a grievance proceeding. An employee charged with
the commission of a felony may be reassigned to duties
which do not involve direct interaction with pupils
pending final disposition of the charges.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.


Each governing board separately has the power and
duty to:

(a) Determine, control, supervise and manage the
financial, business and education policies and affairs of
the state institutions of higher education under its
jurisdiction;

(b) Develop a master plan for the institutions under its
jurisdiction, except the administratively linked
community and technical colleges which retain an
institutional board of advisors shall develop their
master plans subject to the provisions of section one,
article six of this chapter.

(1) The ultimate responsibility for developing and
updating the master plans at the institutional level
resides with the board of governors, or board of
advisors, as applicable, but the ultimate responsibility
for approving the final version of the institutional
master plans, including periodic updates, resides with
the commission or council, as appropriate.

(2) Each master plan shall include, but not be limited
to, the following:

(A) A detailed demonstration of how the master plan
will be used to meet the goals and objectives of the
institutional compact;
(B) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(C) Document the involvement of the commission or council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

(3) The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary;

(c) Prescribe for the institutions under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(d) Direct the preparation of a budget request for the institutions under its jurisdiction, which relates directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;

(e) Consider, revise and submit to the commission or council, as appropriate, a budget request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institutions under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institutional compact and the education and workforce needs of its responsibility district. As a part of the review, each
governing board shall require the institutions under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(g) Ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at institutions under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned;

(h) Subject to the provisions of article one-b of this chapter, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the Commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(i) Use faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for
employees at the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(l) Solicit and use or expend voluntary support, including financial contributions and support services, for the institutions under its jurisdiction;

(m) Appoint a president for the institutions under its jurisdiction subject to the provisions of section six, article one-b of this chapter;

(n) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;

(o) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(p) Submit to the commission or council, as appropriate, no later than the first day of November of each year an annual report of the performance of the institution under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;

(q) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;
(r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke delegations of authority made by the governing boards of Marshall University or West Virginia University as they relate to the state institutions of higher education known as Marshall University and West Virginia University;

(t) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(u) Consult, cooperate and work with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly
submitted requests for payment be paid on or before due date but, in any event, within fifteen days of receipt in the State Auditor's office;

(v) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms which shall be submitted to the respective governing board and the Department of Finance and Administration;

(w) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated;

(x) Transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated;

(y) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(z) For each governing board which has under its jurisdiction an administratively linked community and
technical college or a regional campus offering
community and technical college education programs,
create within the administrative structure of its
governing board a subcommittee for community and
technical college education. The subcommittee shall
have at least four members, one of whom is the
chairperson of the board of advisors of the community
and technical college or, in the case of the Governing
Board of West Virginia University, both the member
representing the community and technical college and
the member representing the regional campus; and

(aa) Contract and pay for disability insurance for a
class or classes of employees at a state institution of
higher education under its jurisdiction.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of
retention or nonretention; hearing.

(a) For any probationary faculty the president or other
administrative head of each institution shall give
written notice concerning retention or nonretention for
the ensuing academic year not later than the first day of
March.

(b) If a request is made by the probationary faculty
member not retained, the president or other
administrative head of the institution shall inform the
probationary faculty member by certified mail within
ten days of the reasons for nonretention. Any
probationary faculty member who desires to appeal the
decision may proceed to level three of the grievance
procedure established in article two, chapter six-c of
this code. If the administrative law judge decides that
the reasons for nonretention are arbitrary or capricious
or without a factual basis, the faculty member shall be
retained for the ensuing academic year.

(c) The term “probationary faculty member” shall be
defined according to rules promulgated by the
governing boards. The rights provided to probationary
faculty members by this section are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.

CHAPTER 21. LABOR.

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-4. Employee's right of action against employer.

(a) Any employee whose compensation is at a rate that is in violation of section three of this article has the right to file a grievance pursuant to the provisions of article two, chapter six-c of this code.

(b) No agreement for compensation at a rate of less than the rate to which the employee is entitled under this article is a defense to any action under this article.

(c) The rights and procedures provided under this section are subject to the provisions of the rules promulgated by the Equal Pay Commission in accordance with section six of this article.

(d) Except as otherwise provided in subsection (d), section six of this article, the provisions of this section shall not become effective until the Legislature approves for promulgation the rules proposed by the Equal Pay Commission under the provisions of subsection (c) of said section.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS.

ARTICLE 7. ENVIRONMENTAL RESOURCES.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his or her probationary appointment, the person:

(1) Is a citizen of West Virginia, in good health and
good character, reputation and temperate habits; (2) has had at least six years' actual relevant experience in the oil and gas industry: Provided, That not exceeding three years of the experience shall be satisfied by any combination of: (i) A bachelor of science degree in science or engineering which shall be considered the equivalent of three years' actual relevant experience in the oil and gas industry; (ii) an associate degree in petroleum technology which shall be considered the equivalent of two years actual relevant experience in the oil and gas industry; and (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the Oil and Gas Inspectors' Examining Board and shall furnish any evidence of good health, character and other facts establishing eligibility required by the board. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed all written and oral examinations, the board shall add the applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the Division of Environmental Protection. No candidate's name may remain on the register for more than three years without requalifying.

(c) Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the director and the Oil and Gas Inspectors' Examining Board may make recommendations for salary determinations. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the director shall consider ability, performance of duty and
experience. Inspectors and supervising inspectors are entitled to mileage expense reimbursement at the rate established for in-state travel of public employees, in the Governor's travel rules, as administered by the Department of Administration. No reimbursement for traveling expenses may be made except upon an itemized account of the expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that the expenses were actually incurred in the discharge of official duties.

(d) (1) For grievances concerning matters other than suspension or dismissal, inspectors may file written grievances in accordance with the procedures set forth in article two, chapter six-c of this code. For a level one grievance, the inspector shall file the grievance with the supervising inspector. For a level two grievance, the inspector shall file the grievance with the chief of the Office of Oil and Gas.

(2) An inspector or the supervising inspector, after having received a permanent appointment, shall be suspended or dismissed by the chief of the Office of Oil and Gas only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office or other good cause.

(3) Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition the chief of the office of oil and gas for the dismissal of an inspector or the supervising inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, the chief shall cause an investigation of the facts to be made. If, after investigation, the chief finds that there is substantial evidence which, if true, warrants dismissal of the inspector or supervising inspector, the chief shall bring the petition before the Oil and Gas Inspectors' Examining Board requesting dismissal of the inspector or supervising inspector.
(4) A level three grievance is a hearing before the board to consider the appeal of a level two grievance, the appeal of suspension or dismissal by the chief or a citizens' petition seeking dismissal of an inspector or supervising inspector. For any level three grievance, the chief may not preside over the hearing and may not vote. The remaining members of the board shall select a member of the board to serve as acting chair, who may not vote.

(5) An appeal of an inspector from a suspension or dismissal by the chief may be filed by the end of the tenth day following the suspension or dismissal notwithstanding the time limits and requirements set forth in article two, chapter six-c of this code.

(6) On receipt of an appeal of a level two grievance, an appeal of suspension or dismissal by the chief or a citizens' petition seeking dismissal of an inspector or the supervising inspector, the Oil and Gas Inspectors' Examining Board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in the notice, which time shall be not less than fifteen days nor more than thirty days thereafter notwithstanding the time limits and requirements set forth in article two, chapter six-c of this code. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the appeal or petition filed with the board.

(7) At the time and place designated in the notice, the Oil and Gas Inspectors' Examining Board shall conduct a level three grievance proceeding in which the testimony shall be recorded to enable a transcript to be prepared for any further appeal. The board shall hear all evidence offered in support of the appeal or petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any hearing. No continuance may be granted except for good cause shown.
(8) The acting chair of the board may administer oaths and subpoena witnesses.

(9) An inspector or supervising inspector who willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the ground that the inspector's testimony or answer might incriminate the inspector, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which the inspector may be asked to testify at the hearing before the board, forfeits the inspector's position notwithstanding any provisions to the contrary in article two, chapter six-c of this code.

(10) If, after hearing, the Oil and Gas Inspectors' Examining Board finds that the inspector or supervising inspector should be suspended, dismissed or otherwise disciplined, it shall enter an order to that effect. An appeal of the decision of the board shall proceed as a level three proceeding under the provisions of article two, chapter six-c of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-27. Correctional officers; regional jails; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the authority, when employing correctional officers to complete the approved staffing plan of a regional jail completed after the effective date of this section, shall employ any correctional officer applying for a position as a correctional officer at a regional jail who was employed in good standing at a county jail facility in the region at the time of its closing or at a prison facility operated by the Division of Corrections: Provided, That the regional jail is located within the same region as the prison facility that was closed due to relocation of the prison facility to a site outside the

13 region. Only those correctional officers who are
14 employees in good standing at the time the prison
15 facility is closed are eligible for transfer under the
16 provisions of this subsection. Correctional officers,
17 employed under the provisions of this subsection, shall
18 be employed at a salary and with benefits consistent
19 with the approved plan of compensation of the Division
20 of Personnel, created under section five, article six,
21 chapter twenty-nine of this code. All correctional
22 officers employed under this subsection shall also be
23 covered by the policies and procedures of the West
24 Virginia Public Employees Grievance Board, created
25 under article two, chapter six-c of this code and the
26 classified-exempt service protection policies of the
27 Division of Personnel.

28 (b) The authority shall, when employing correctional
29 officers to fill positions within the approved staffing
30 plan of any regional jail, employ any correctional officer
31 applying for a position as a correctional officer at a
32 regional jail who was previously employed as a
33 correctional officer in good standing at any local jail
34 facility: Provided, That the local jail facility is located
35 within the same region as the regional jail at the time of
36 the local jail facility's closing or reduction in size and
37 was reduced in size or closed prior to or due to the
38 completion of the regional jail within the region.
39 Correctional officers, employed under the provisions of
40 this subsection, shall be employed at a salary and with
41 benefits consistent with the approved plan of
42 compensation of the Division of Personnel, created
43 under section five, article six, chapter twenty-nine of
44 this code. Only those county correctional officers who
45 are employees in good standing at the time the local jail
46 facility is closed are eligible for transfer under the
47 provisions of this subsection. All correctional officers
48 employed under this subsection shall also be covered by
49 the policies and procedures of the West Virginia Public
50 Employees Grievance Board created under article two,
51 chapter five-c of this code and the classified-exempt
52 service protection of the Division of Personnel.

(a) There is continued within the department a body corporate and politic to be known as the West Virginia Health Insurance Plan which shall be considered to be an instrumentality of the state and a public corporation. The plan shall have perpetual existence and any change in the name or composition of the plan shall in no way impair the obligations of any contracts existing under this article.

(b) The plan shall operate subject to the supervision and control of the board. The board shall consist of the commissioner or his or her designated representative, who shall serve as an ex officio member of the board and shall be its chairperson, and six members appointed by the Governor. At least two board members shall be individuals, or the parent, spouse or child of individuals, reasonably expected to qualify for coverage by the plan. At least two board members shall be representatives of insurers. At least one board member shall be a hospital administrator. A majority of the board shall be composed of individuals who are not representatives of insurers or health care providers.

(c) Board members shall serve for a term of three years. A board member's term shall continue until his or her successor is appointed.

(d) Vacancies in the board shall be filled by the Governor. Board members may be removed by the Governor for cause.

(e) Board members shall not be compensated in their capacity as board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.
(f) The board shall submit to the commissioner a plan of operation for the plan and any amendments to the plan necessary or suitable to assure the fair, reasonable and equitable administration of the plan. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this article must be made available. If the board fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall adopt and promulgate any rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner.

(g) The plan of operation shall:

(1) Establish procedures for operation of the plan: Provided, That the plan shall be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option to provide health insurance coverage for individuals eligible for the federal health care tax credit established by the federal Trade Adjustment Assistance Reform Act of 2002 (Section 35 of the Internal Revenue Code of 1986);

(2) Establish procedures for selecting an administrator in accordance with section six of this article;

(3) Establish procedures for the handling, accounting and auditing of assets, moneys and claims of the plan and the plan administrator;

(4) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment;

(5) Establish procedures under which applicants and participants may have grievances reviewed by a
grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three years; and

(6) Provide for other matters that are necessary and proper for the execution of the board’s powers, duties and obligations under this article.

(h) The plan shall have the general powers and authority granted under the laws of this state to health insurers and, in addition thereto, the specific authority to:

(1) Enter into contracts that are necessary or proper to carry out the provisions and purposes of this article, including the authority, with the approval of the commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions: Provided, That the provisions of article three, chapter five-a of this code relating to the Division of Purchasing of the Department of Administration do not apply to any contracts executed by or on behalf of the plan under this article;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the plan;

(3) Take any necessary legal action:

(A) To avoid the payment of improper claims against the plan or the coverage provided by or through the plan;

(B) To recover any amounts erroneously or improperly paid by the plan;

(C) To recover any amounts paid by the plan as a result of mistake of fact or law; or
(D) To recover other amounts due the plan;

(4) Establish and modify, from time to time, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the plan. Rates and rate schedules may be adjusted for appropriate factors such as age, sex and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;

(5) Issue policies of insurance in accordance with the requirements of this article;

(6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design and any other function within the authority of the pool;

(7) Borrow money to effect the purposes of the plan. Any notes or other evidence of indebtedness of the plan not in default shall be legal investments for insurers and may be carried as admitted assets;

(8) Establish rules, conditions and procedures for reinsuring risks of participating insurers desiring to issue plan coverages in their own name. Provision of reinsurance shall not subject the plan to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers;

(9) Employ and fix the compensation of employees, including an executive director of the plan. The executive director shall have overall management responsibility for the plan and is exempt from the classified service and not subject to the procedures and protections provided by article two, chapter six-c of this code and article six, chapter twenty-nine of this code;

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance
producers and to the general public;

(11) Provide for reinsurance of risks incurred by the plan;

(12) Issue additional types of health insurance policies to provide optional coverages, including medicare supplemental insurance;

(13) Provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization review and individual case management for the purpose of making the benefit plan more cost effective;

(14) Design, use, contract or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations and other limited network provider arrangements: Provided, That all contracts with preferred provider organizations, health maintenance organizations, other network providers or other health care providers shall provide that plan participants are not personally liable for the cost of services covered by the plan other than applicable deductibles or copayments, including any balance claimed by the provider to be owed as being the difference between that provider’s charge or charges and the amount payable by the plan; and

(15) Adopt bylaws, policies and procedures that are necessary or convenient for the implementation of this article and the operation of the plan.

(i) The board shall make an annual report to the Governor which shall also be filed with the Legislature. The report shall summarize the activities of the plan in the preceding calendar year, including the net written and earned premiums, plan enrollment, the expense of administration and the paid and incurred losses.

(j) Neither the board nor its employees are liable for any obligations of the plan. No member or employee of
the board shall be liable and no cause of action of any nature may arise against them for any act or omission related to the performance of their powers and duties under this article unless the act or omission constitutes willful or wanton misconduct. The board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the division, when employing any persons to complete the approved staffing plan of any of its juvenile detention or corrections facilities, shall employ any person otherwise qualified who applies for a position at the juvenile detention or corrections facility who was also employed in good standing at a county or local jail facility, at the time of its closing, that was closed due to the completion of a regional jail.

(b) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code; all employees shall also be covered by the policies and procedures of the West Virginia Public Employees Grievance Board, created under article two, chapter six-c of this code and the classified service protection policies of the Division of Personnel.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this 4th Day of April, 2007.

Governor
PRESENTED TO THE
GOVERNOR
MAR 20 2007
Time 4:00