

SPONSOR: Sen. Poore & Sen. Henry

Sens. Bushweller, Ennis, Hansen, Marshall, McBride, McDowell, Sokola, Townsend, Walsh

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY
SENATE BILL NO. 2

AN ACT TO AMEND TITLES 14, 15, 18, 19, 29 AND 31 OF THE DELAWARE CODE TO PROVIDE FOR THE REORGANIZATION OF STATE GOVERNMENT BY CREATING THE DEPARTMENT OF HUMAN RESOURCES; TRANSFERRING SELECTED DIVISIONS AND OTHER ORGANIZATIONAL UNITS FROM THE OFFICE OF MANAGEMENT AND BUDGET TO THE DEPARTMENT OF HUMAN RESOURCES; AMENDING REFERENCES TO SUPERSEDED AGENCIES OR OFFICERS; AND ALIGNING THE DUTIES OF THE SECRETARY OF HUMAN RESOURCES AND THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.

WHEREAS, it is necessary to periodically examine the structure of State services in order to create a state government that is responsive to customers and provides high quality services; and

WHEREAS, the government of the State of Delaware and the citizens of the state are well served by a quality workforce of talented and well trained State employees; and

WHEREAS, the recruitment, retention, and development of that workforce is important in ensuring that the State is a place that continues to have highly effective employees; and

WHEREAS, state employees and taxpayers of Delaware are best served when state employee benefits are provided in an effective and efficient manner; and

WHEREAS, in order to fulfill the goal of effective and efficient benefit provision, it requires regular study and review of ways to save costs and incorporate the latest best practices; and

WHEREAS, the State's workforce should always strive to better reflect the diversity of the population that it serves; and

WHEREAS, in order to ensure the fulfillment of this goal, it is important to continuously be reviewing and implementing current best practices for the development of a diverse workforce; and

WHEREAS, the proportion of a diverse and inclusive state employee population enhances the performance of all state employees, and in turn enhances the quality of services the State provides; and

WHEREAS, a separate, independent office focused on Human Resources, Statewide Benefits,

Diversity, and Inclusion issues will lead to a government that functions more effectively for the people of the State of Delaware;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29 of the Delaware Code by inserting a new chapter to read as follows:

CHAPTER 90D. DEPARTMENT OF HUMAN RESOURCES

§ 9001D Establishment of Department of Human Resources.

A Department of Human Resources, referred to in this chapter as "Department," is hereby established.

§ 9002 D Secretary; appointment; salary; employees and assistants.

(a) There shall be a Secretary of the Department of Human Resources, hereinafter referred to in this chapter as "Secretary," to be appointed by and to serve at the pleasure of the Governor, with the advice and consent of the Senate. The Secretary shall be paid a salary established by the Governor within the limitation of the funds appropriated therefor.

(b) The Secretary may employ such employees as may be required to carry out the duties of this office and may fix the salaries of such employees within the limitations of the funds appropriated therefor.

(c) In the event of a vacancy in the position of Secretary, including the death, resignation, temporary incapacity or removal of the incumbent, and prior to the appointment of a successor, the Governor may appoint any qualified individual to serve as Acting Secretary.

(d) The Secretary may call upon any other state officer for such assistance as the Secretary may require and may employ such special help as it may require to carry out this chapter. The Secretary shall fix the compensation of such persons as may be employed to be paid out of such funds as the General Assembly may appropriate for that purpose.

§ 9003D General powers and duties.

The Secretary of the Department of Human Resources shall have the following powers, duties and functions:

(a) To supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(b) To supervise and direct all human resources and benefits employees in Executive Branch agencies subject to terms and conditions of negotiated service level agreements with Executive Branch agencies.

(c) To appoint and fix the salary, with the written approval of the Governor, of the following administrators, who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

(1) A Deputy Secretary position in the Department who shall be known as the Deputy Secretary and who shall be qualified by training and experience to perform the duties of the office.

(2) A Director of Personnel Management who shall be qualified by training and experience to perform the duties of the office.

(3) A Chief Diversity Officer who shall be qualified by training and experience to perform the duties of the office.

(4) A Director of Labor Relations and Employment Practices who shall be qualified by training and experience to perform the duties of the office.

(5) A Director of Statewide Benefits who shall be qualified by training and experience to perform the duties of the office.

(d) To appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(e) To establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions and other groups within the Department, with the written approval of the Governor, as may be necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(f) To make and enter into any and all contracts, agreements or stipulations, to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever they shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purpose, with the specific requirement that all necessary legal services be provided pursuant to Chapter 25 of this title;

(g) To approve and sign all collective bargaining agreements on behalf of the State.

(h) To delegate any of the Secretary's powers, duties or functions to an individual in paragraph (c) of this section, except the power to remove employees of the Department or to fix their compensation;

(i) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(j) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(k) To adopt an official seal or seals for the Department;

(l) To accept and to receive, in furtherance of the Department's function, funds, grants and services from the federal government or its agencies;

(m) To assume such other powers, duties and functions as the Governor may assign that are not otherwise inconsistent with the laws of this State;

(n) To prepare, in cooperation with the division directors, a proposed budget for the operation of the Department, to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly, with the provision that special funds may be used in accordance with approved programs, grants and appropriations;

§ 9004D Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of the Department of Human Resources;

(2) Deputy Secretary;

(3) Director of Personnel Management;

(4) Chief Diversity Officer;

(5) Director of Labor Relations and Employment Practices; and

(6) Director of Statewide Benefits.

§ 9005D Personnel Management.

(a) The Division of Personnel Management of the Department of Human Resources is hereby established, having the powers, duties and functions as follows:

(1) Consistent with the right of public employees to organize under Chapter 13 of Title 19, the Director of Personnel Management shall have the following responsibilities:

a. Attend all meetings of the Merit Employee Relations Board, act as liaison between the Board and the

Department of Human Resources, and cooperate with the staff of the Board in administrative and technical activities;

b. Establish and maintain a roster of all employees in the classified service as defined in § 5903 of this title, setting forth pertinent data as to each employee, including the class, title of the position held, salary or pay, and any change in class title, pay or status;

c. Designate an employee to act as the staff development officer for the Department of Human Resources, funded through appropriated special funds. This individual will support statewide training programs for state managers, supervisors and employees. Statewide training programs will be supported with funds generated from the assessment of charges for courses on agencies participating in certain classes held by the Department of Human Resources. The Department of Human Resources may set charges for courses to sustain or create training programs with the funds placed in an appropriated special fund account;

d. Encourage the development of more effective personnel administration within the departments and agencies in the state service and make available for this purpose the assistance and facilities of the Merit Employee Relations Board;

e. Investigate from time to time the operation and effect of Chapter 59 of this title, and of the rules made thereunder and to report findings and recommendations to the Merit Employee Relations Board; and

f. Perform any other lawful acts necessary or desirable to carry out the provisions of Chapter 59 of this title and the rules adopted thereunder.

(b) The Director of Personnel Management shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

§ 9006D Diversity and Inclusion.

(a) The Division of Diversity and Inclusion of the Department of Human Resources is hereby established having powers, duties and functions as follows:

(1) The Division shall assume all responsibilities and oversight previously assigned to the Governor's Council on Equal Employment Opportunity.

(2) The Chief Diversity Officer shall have the following responsibilities:

a. Guide efforts to define, assess, and cultivate access, equity, diversity, and inclusion throughout state government.

b. Provide analysis of various forms of institutional data to benchmark and promote accountability for the diversity mission of state agencies.

c. Promote and provide education to foster an awareness and understanding of the various laws, regulations, and policies regarding nondiscrimination.

d. Collaborate with state agencies to identify policies and practices supporting the recruitment and retention of employees from historically underrepresented groups.

e. Develop diversity metrics and processes to assess diversity, equity, and inclusion efforts.

(b) The Chief Diversity Officer shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

§ 9007D Labor Relations and Employment Practices.

(a) The Division of Labor Relations and Employment Practices of the Department of Human Resources is hereby established having powers, duties and functions as follows:

(1) The Director of the Division of Labor Relations and Employment Practices shall have the following responsibilities:

a. To establish management practices that address workplace fairness and stability in accordance with Merit law and Merit Rules.

b. To assume the central leadership role for the Executive Branch over all matters relating to collective bargaining, and any other personnel and labor relations matters affecting the Executive Branch and its departments and agencies, including negotiations with employee organizations, labor arbitration, Public Employment Relations Board, Department of Labor, Equal Employment Opportunity Commission and other administrative proceedings.

c. To assume responsibility for any other agreement or arrangements made involving employee organizations that represent employees subject to Executive Branch authority.

(b) The Director of Labor Relations and Employment Practices shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

§ 9008D Statewide Benefits.

(a) The Division of Statewide Benefits of the Department of Human Resources is hereby established having powers, duties and functions as follows:

(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability, supplemental benefits and the Blood Bank.

(b) The Director of Statewide Benefits shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

§ 9008D Counsel; powers and duties.

The Department shall employ one counsel experienced in the field of labor and employment law, who may advise the Department on matters of labor and employment law and who shall assist the Department in developing standards, policies, programs and training materials that satisfy Delaware and federal law

§ 9010D Functions prior to July 1, 2017.

The Department of Human Resources, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions that were vested in the Human Resource Management and the Benefits and Insurance Administration Sections of the Office of Management and Budget prior to July 1, 2017, and which are not otherwise specifically assigned to the Department of Human Resources by this chapter, excepting only those powers, duties and functions expressly vested in or retained by any such person, department, board, commission or agency.

§ 9011D Appeals.

Any and all rights of appeal now existing by law, with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Department of Human Resources or to any division or subdivision or office thereof, shall continue to exist with respect to such act or acts as hereafter performed by the Department of Human Resources or by the division, subdivision or office to which such function is transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

§ 9012D Transfers and continuity.

(a) All books, records, papers, maps, charts, plans and other material including, but not limited to, any equipment in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Department of Human Resources shall, on July 1, 2017, be delivered into the custody of the said

Department. All investigations, petitions, hearings and legal proceedings pending before or instituted by any agency from which functions are transferred by this chapter and not concluded prior to July 1, 2017, shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Department. All orders, rules and regulations made by any agency from which functions are transferred by this chapter and which govern such functions, and which are in effect on July 1, 2017, shall remain in full force and effect until revoked or modified in accordance with law by the Department. All contracts and obligations of any agency made or undertaken in the performance of a function transferred to the Department by this chapter and being in force on July 1, 2017, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Department.

(b) Employees of any agency whose functions are consistent with and have been transferred to the Department of Human Resources by this chapter shall continue and be deemed to be the employees of the said Department on July 1, 2017, and, where applicable, with all the benefits accrued as merit employees as of July 1, 2017.

(c) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred to the Department of Human Resources, be construed as referring and relating to the Department of Human Resources as created and established by this chapter.

(d) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Department of Human Resources, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

§ 9013D Misnomer in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department of Human Resources or any predecessor agency thereof if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby the estate or interest therein expressed or described to the Department or to any commission, board, department, authority, council or agency, from which, by this chapter, the powers, duties and functions have been transferred to the Department.

§ 9014D Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

Section 2. Amend § 2515, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2515 Exceptions.

(d) Notwithstanding § 2507 of this title, the Department of Personnel established pursuant to Chapter 90D of this title shall be permitted to employ one counsel experienced in the field of labor and employment law to advise the Department on matters of labor and employment law and assist the Department in developing standards, policies, programs and training materials that satisfy Delaware and federal law.

Section 3. Amend § 6303A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6303A General powers and duties.

(11) To appoint and fix the salary, with the written approval of the Governor, of the following administrators, who may be removed from office by the Director with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Office as may be assigned by the Director:

a. A Management Services Administrator who shall be qualified by training and experience to perform the duties of the office.

b. A Facilities Management Administrator who shall be qualified by training and experience to perform the duties of the office.

c. A Government Support Services Administrator who shall be qualified by training and experience to perform the duties of the office.

~~d. A Human Resource Management Administrator who shall be qualified by training and experience to perform the duties of the office.~~

~~e. A Benefits and Insurance Administrator who shall be qualified by training and experience to perform the duties of the office.~~

~~f.~~d. An Administrator of Budget Development, Planning and Administration who shall be qualified by training and experience to perform the duties of the office.

Section 4. Amend § 6305A, Title 29 of the Delaware Code by making deletions as shown by

strikethrough and insertions as shown by underline as follows:

§ 6305A Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Director of the Office of Management and Budget;

(2) Management Services Administrator;

(3) Facilities Management Administrator;

(4) Government Support Services Administrator; and

~~(5) Human Resource Management Administrator;~~

~~(6) Benefits and Insurance Administrator; and~~

(~~7~~5) Administrator of Budget Development, Planning and Administration.

Section 5. Amend § 6305A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

~~§ 6309A Human Resources Management.~~

~~(a) The Human Resources Management Section of the Office of Management and Budget is hereby established having powers, duties and functions relating to human resources as follows:~~

~~(1) In addition to the duties imposed upon the Human Resources Management Administrator elsewhere in this Code and consistent with the right of public employees to organize under Chapter 13 of Title 19, it shall be the Administrator's duty to:~~

~~a. Attend all meetings of the Merit Employee Relations Board and act as liaison between the Board and the Office of Management and Budget, and to cooperate with the staff of the Board in administrative and technical activities;~~

~~b. Establish and maintain a roster of all employees in the classified service as defined in § 5903 of this title, setting forth pertinent data as to each employee, including the class title of the position held, salary or pay, and any change in class title, pay or status;~~

~~c. Designate an employee to act as the staff development officer for the Office of Management and Budget, funded through appropriated special funds. This individual will support statewide training programs for state managers, supervisors and employees. Statewide training programs will be supported with funds generated from the assessment of charges for courses on agencies participating in certain classes held by the Office of Management and Budget. The Office of Management and Budget may set charges for courses to sustain or create~~

~~training programs with the funds placed in an appropriated special fund account;~~

~~d. Encourage the development of more effective personnel administration within the departments and agencies in the state service and to make available for this purpose the assistance and facilities of the Merit Employee Relations Board;~~

~~e. Investigate from time to time the operation and effect of Chapter 59 of this title, and of the rules made thereunder and to report findings and recommendations to the Merit Employee Relations Board; and~~

~~f. Perform any other lawful acts necessary or desirable to carry out the provisions of Chapter 59 of this title and the rules adopted thereunder.~~

~~(b) The Human Resources Management Administrator shall assume such other powers, duties and functions as the Director of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.~~

Section 6. Amend § 6306A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

~~§ 6310A Benefits and Insurance Administration.~~

~~(a) The Benefits and Insurance Administration Section of the Office of Management and Budget is hereby established having powers, duties and functions as follows:~~

~~(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Administrator shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability and the Blood Bank.~~

~~(2) The Director of the Office of Management and Budget shall have such powers and duties with regard to the State Insurance Coverage Office as may be provided in the annual operating act.~~

~~(b) The Benefits and Insurance Administrator shall assume such other powers, duties and functions as the Director of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.~~

Section 7. Amend §121, Title 14 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 121 General powers of the Department of Education.

(a) The Department shall exercise general control and supervision over the public schools of the State, including:

(4) Hiring, through the Secretary, by execution of a written contract for a term of not less than 1 year and not more than 5 years, of certificated professional employees, other than those persons described in paragraph (a)(3) of this section and § 103(a)(2) of this title, necessary for carrying out the policies, rules and regulations of the Department. For the purposes of this subsection, the term "certificated professional employees" includes education associates, education specialists, field agents, technicians and other employees holding positions of similar rank. The Secretary may elect not to renew the contract of a certificated professional employee upon its expiration. However, in such a case, the Secretary shall notify the employee in writing by certified mail, return receipt requested, at least 4 months prior to the expiration date of the existing contract that the Secretary does not intend to renew the contract, thereby providing official notice that the services of the employee are to be terminated. Failure to notify a person covered under this subsection in writing by the required date shall result in an automatic extension of the existing contract for a period of 1 year from its expiration date. The written notification shall indicate that just cause exists for the Secretary's proposed action. For the purposes of this subsection, "just cause" shall be defined as including, but not limited to, reduction in force, inefficiency, or unsatisfactory performance of duties. Any employee notified of the Secretary's intention not to renew for reasons other than a reduction in force may request a formal hearing before a hearing officer appointed by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources within 15 calendar days from the date that notice of the Secretary's intention not to renew is sent by certified mail. In the event that an employee requests a hearing in a timely manner, the ~~Office of Management and Budget~~ Department of Human Resources shall convene a hearing no earlier than 10 days nor later than 90 days after receipt of the request for a hearing, unless both parties agree to a different schedule. The employee shall have the opportunity to present information in the employee's own defense and may have legal counsel at the hearing;

(5) Dismissing or disciplining, through the Secretary, during the contract period, for misconduct in office, incompetency, or willful neglect of duty, any officer or certificated professional employee appointed under this title or under any special school law, except an employee whose position is covered in § 103(a)(2) of this title, giving the employee a copy of the charges against the employee. In making a determination to dismiss or to impose a lesser disciplinary action, the Secretary shall assess and take into account any mitigating or extenuating circumstances as well as the employee's work history. Any employee dismissed pursuant to this subsection may

request a formal hearing before a hearing officer appointed by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources within 15 calendar days from the date that notice is sent by certified mail or the date of receipt of the written notification of dismissal from the Secretary if hand-delivered, whichever is applicable. In the event that an employee timely requests a hearing, the ~~Office of Management and Budget~~ Department of Human Resources shall convene a hearing no earlier than 10 days nor later than 90 days after receipt of the request for a hearing, unless both parties agree to a different schedule. The employee shall have the opportunity to present information in the employee's own defense and may have legal counsel at the hearing;

(6) Hiring, through the Secretary, any clerical assistants and other noncertificated employees necessary to provide support in carrying out the policies, rules and regulations of the Department or the State Board, or both. An employee hired pursuant to this subsection shall not enter into a written contract with the Department. Such employee shall be subject to dismissal or other disciplinary action imposed by the Secretary only for just cause. For the purposes of this subsection, "just cause" includes, but is not limited to, reduction in force, inefficiency unsatisfactory performance of duties, misconduct, immorality, incompetency, and willful neglect of duty;

In making a determination to dismiss or to impose a lesser disciplinary action pursuant to this subsection, the Secretary shall assess and take into account any mitigating or extenuating circumstances as well as the employee's work history. Any employee dismissed pursuant to this subsection may request a formal hearing before a hearing officer appointed by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources within 15 calendar days from the date that notice is sent by certified mail or the date of receipt of the written notification of dismissal from the Secretary if hand-delivered, whichever is applicable. In the event that an employee timely requests a hearing, the ~~Office of Management and Budget~~ Department of Human Resources shall convene a hearing no earlier than 10 days nor later than 90 days after receipt of the request for a hearing, unless both parties agree to a different schedule. The employee shall have the opportunity to present information in the employee's own defense and may have legal counsel at the hearing;

Section 8. Amend §1327, Title 14 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1327 Leave of absence for person in military service.

(b) Any principal, teacher or other school employee taking a leave of absence authorized by subsection (a) of this section who, as a member of the Delaware National Guard or a United States military reserve organization, has been ordered to active duty to augment active forces for any operational mission, shall continue

to receive the principal's, teacher's or other school employee's state compensation during the initial period of active duty prescribed by the military, to be reduced by any military compensation received. While on such leave of absence, for a period not to exceed 2 years, the employee and the employee's dependents shall continue to receive benefits provided under any applicable group health insurance plan offered by the school district, provided that the employee continues to pay any employee-share premium for such plan. The ~~Office of Management and Budget~~ Department of Human Resources shall develop any rules and regulations necessary to implement the provisions of this subsection. These rules shall make it the responsibility of the employee to initiate the claim and supply the required military pay information. The State shall be responsible for collecting information relating to State compensation. Claims shall be filed within 90 days of release from active duty or passage of this legislation, whichever is later.

Section 9. Amend §9219, Title 14 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9219 Basic salary schedule for Plan A employees.

(d) The Board of Trustees of the College may certify that specific instructional positions are in scarce supply and shall report that determination to the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and Controller General. After such certification, new hires on the Salary Plan A schedule who are to be engaged in positions of scarce supply may be offered a salary by the Board of Trustees that exceeds the scheduled salary by up to 15%.

(2) a. The class specifications for positions occupied by Delaware Technical and Community College Plan B employees shall be assigned paygrades comparable to the Merit System pay plan using the same criteria authorized by the ~~Office of Management and Budget~~ Department of Human Resources for Merit System positions.

b. Periodic classification maintenance reviews shall be processed under the normal ~~Office of Management and Budget~~ Department of Human Resources maintenance review processes. Critical reclassifications shall be processed under the same general system as the Merit System, subject to final approval of a committee composed of the President of the College, Secretary of the Department of Human Resources, Director of the Office of Management and Budget and Controller General.

(3) The College is authorized to hire at up to 100% of the midpoint of an assigned paygrade upon the signature of the appropriate Vice President and Campus Director; hiring beyond the 100% of midpoint shall

require the signatures of the Secretary of the Department of Human Resources, Director of the Office of Management and Budget and Controller General.

(4) Any changes in the allocation of jobs to grade level shall be approved by the Board of Trustees and filed with the Secretary of the Department of Human Resources, Director of the Office of Management and Budget and the Controller General.

Section 10. Amend §213, Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 213 Employees; duties and compensation.

(b) The duties of such employees and the duties of any investigator appointed by the State Election Commissioner pursuant to § 302(14) of this title hereof, shall be prescribed by the Board and the compensation fixed by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources.

Section 11. Amend §3207, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3207 Legal agent of the State.

The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources shall be the legal agent for the State and shall be empowered to enter into the contract for group life insurance with any insurance carrier designated by the State Employee Benefits Committee.

Section 12. Amend §3208, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3208 Administration of chapter.

The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources may perform all acts necessary or proper for administration of the insurance coverage provided.

Section 13. Amend §6502, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6502 Insurance for the protection of the State and the public; determination of coverage.

There is hereby established the Insurance Coverage Determination Committee, which shall be composed of the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources, the State Auditor and the Insurance Commissioner or their designees, during their respective terms of office.

The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources

or his or her designee shall serve as the Chair of the Committee. The Committee shall from time to time determine the method of insuring, the amount of insurance, and the class of coverage covering any type of risk to which the State may be exposed, including, but not limited to: property insurance, as defined in § 904 of this title; surety insurance, as defined in § 905(a)(1) of this title; casualty insurance, as defined in § 906 of this title; marine and transportation and "wet marine" insurance, as defined in § 907 of this title; title insurance, as defined in § 908 of this title; to be effected and carried by the State or any subdivision thereof, including all school districts, but excluding, however, municipal corporations, counties, and the authorities relating to the crossings of the Delaware River and the Delaware Bay.

Section 14. Amend §6505, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6505 Establishment of Insurance Coverage Office.

There is hereby established under the direction and supervision of the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources the Insurance Coverage Office, the executive head of which shall be the Insurance Coverage Administrator, who shall serve in the state classified service.

Section 15. Amend §6521, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6521 Payment of premiums on commercial insurance.

The estimated appropriation necessary for commercially procured insurance as authorized by § 6520 of this title for each fiscal year shall be determined by the Insurance Coverage Office and submitted to the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources for review and consideration as ~~a~~ part of the annual ~~contingency~~ budgets requested by the ~~Office~~ Department. Upon appropriation by the General Assembly the funds shall be utilized by the Administrator for the payment of premiums for coverages.

Section 16. Amend §6532, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6532 Payment of premium allocations.

The estimated appropriation necessary for each fiscal year shall be determined by the Insurance Coverage Office and submitted to the ~~Director of the Office of Management and Budget~~ Secretary of the

Department of Human Resources for review and consideration as ~~1~~ part of the annual ~~contingency~~ budgets requested by the ~~Office~~ Department. Upon appropriation by the General Assembly, the funds shall be utilized for the purposes of paying coverages.

Section 17. Amend §6541, Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6541 Inspections of insured property.

The Insurance Coverage Office shall have available to it the services of the State Fire Marshal and the State Fire Marshal's deputies for the purpose of inspecting self-insured real and personal property of the State, and may call upon the Fire Marshal and State Fire Marshal's deputies to conduct such inspections of such property as are reasonable and necessary to determine the risk involved in insuring same and to provide the basis for requests or suggestions as to how undesirable hazards may be corrected; and the Fire Marshal and the State Fire Marshal's deputies shall cooperate with the Insurance Coverage Office in this regard, conducting such investigations as are requested and reporting the results thereof to the Insurance Coverage Office together with such recommendations as the investigator shall deem to be appropriate.

All state agencies, officials and employees will render full cooperation to the Fire Marshal and the Insurance Coverage Office in these matters and shall promptly correct such hazards as are found to exist, and failure to do so shall be referred to the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources by the Insurance Coverage Office for such remedial executive action as the Governor shall deem appropriate.

Section 18. Amend §204, Title 19 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 204 Training and apprenticeship programs.

(a) The State Department of Labor shall develop and conduct employee training and registered apprenticeship programs, in cooperation with participating appointing authorities and the ~~Office of Management and Budget~~ Department of Human Resources. The ~~Office of Management and Budget~~ Department of Human Resources shall assist appointing authorities in utilizing such programs, and in developing the apprenticeships which are established pursuant to this section.

(b) The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources, in cooperation with the Department of Labor and other participating appointing authorities, shall

develop and annually revise a list of employment classifications in the classified service which are appropriate for apprenticeship training by December 31.

(c) The Apprenticeship and Training Section of the Department of Labor shall establish procedures for the coordination of programs developed under this section, in cooperation with the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources.

(d) Subject to the approval of the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources and the procedures established by the Apprenticeship and Training Section of the Department of Labor, each participating agency shall determine the location and positions in which apprenticeships are to be established.

(e) The Secretary of Labor shall include in the Secretary's annual report the following:

(10) A summary of characteristics of applicants and participants in the program deemed pertinent by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources.

Section 19. Amend §2301B, Title 19 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2301B Hearing officers.

(d) The removal of a hearing officer by the Secretary of Labor, after consultation with the Chairperson of the Board, during the term of appointment may be made for just cause. For the purposes of this subsection only, "just cause" shall be defined as including, but not limited to, reduction in force, inefficiency or unsatisfactory performance of duties. The employee may contest the removal and file for binding arbitration and an arbitrator will be appointed jointly by the Chairperson of the Merit Employees Relations Board and the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources to determine the matter.

Section 20. Amend §3402, Title 19 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 3402 Disbursement of special assessment funds.

b. Of this 25 percent sum, not more than $100,000 shall be allocated for subgrants to fund career training for state employees. Appropriate regulations for the granting of these funds shall be developed by the Delaware Economic Development Office, in cooperation with the ~~Office of Management and Budget~~ Secretary of the Department of Human Resources and a representative of a public employees' union representing state employees.

Section 21. Amend §3301, Title 29 of the Delaware Code by making deletions as shown by strikethrough

and insertions as shown by underline as follows:

§ 3301 Established; composition; qualifications; terms of office.

There is established a commission known as the "Delaware Compensation Commission," hereinafter referred to as the "Commission," consisting of 6 members, 2 of whom shall be appointed by the Governor, 1 by the President Pro Tempore of the Senate and 1 by the Speaker of the House of Representatives. The fifth member shall be the President of the Delaware Round Table. The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources of the State shall serve as an ex officio and nonvoting member of the Commission. The appointees shall be persons not holding any public office nor employed substantially full-time with compensation by this State while serving on this Commission. Those appointed shall serve for a 6 year term. Any member is eligible for reappointment.

Section 22. Amend §5105, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5105 Leave of absence for military service; pension rights; term of successor appointees.

(b) Any employee of the State taking a leave of absence authorized by subsection (a) of this section who, as a member of the Delaware National Guard or a United States military reserve organization, has been ordered to active duty to augment active forces for any operational mission, shall continue to receive that employee's own state compensation during the initial period of active duty prescribed by the military, to be reduced by any military compensation received. While on such leave of absence, for a period not to exceed 2 years, the employee and the employee's dependents shall continue to receive benefits provided under the State's group health insurance plan, provided that the employee continues to pay any employee-share premium for such plan. The ~~Office of Management and Budget~~ Department of Human Resources shall develop any rules and regulations necessary to implement the provisions of this subsection. These rules shall make it the responsibility of the employee to initiate the claim and supply the required military pay information. The State shall be responsible for collecting information relating to State compensation. Claims shall be filed within 90 days of release from active duty or passage of this legislation, whichever is later.

Section 23. Amend §5113, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5113 Leave for Olympic competition.

(d) The ~~State Personnel Commission~~ Department of Human Resources shall implement this section by

the adoption of appropriate rules and regulations.

Section 24. Amend §5114, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5114 Membership in Blood Bank of Delaware.

(e) The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources shall be responsible for the administration of this section.

Section 25. Amend §5257, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5257 Return to work.

(a) Once an employee has been determined to have the ability to return to employment by the Committee, the employee will receive the following assistance:

(1) Merit employees may be placed in any vacant merit position, for which they qualify, by the ~~Office of Management and Budget~~ Secretary of the Department of Human Resources.

(b) Once an individual has been determined to have the ability to return to employment by the committee, the individual will receive the following assistance:

(1) Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the ~~Office of Management and Budget~~ Department of Human Resources in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.

Section 26. Amend §5258, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5258 Appeals.

The carrier shall notify a participating employee of its determination of the employee's eligibility for short-term disability benefits in writing by certified mail, return receipt requested, within 10 days of the carrier's determination. Within 90 days of the postmark date of the carrier's written notice of its determination, an aggrieved participating employee may appeal any denial of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the carrier. The carrier shall have the authority to reverse all or

any part of its initial decision to deny benefits and shall notify the employee, the employing organization and ~~the~~ Statewide Benefits ~~Office~~ in writing by certified mail, return receipt requested within 10 days of the carrier's determination.

Within 20 days of the postmark date of the carrier's determination of appeal an aggrieved participating employee may file a second level appeal of denial of disability benefits by filing a written petition setting forth with particularity the grounds for second appeal, with the Appeals Administrator, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the carrier to deny benefits.

The Appeals Administrator or designee, shall issue a final written decision and shall mail it to the employee by certified mail, return receipt requested, within 30 days of speaking with the employee. The Committee shall designate an officer of the Division of ~~the~~ Statewide Benefits ~~Office~~ to act as the Appeals Administrator.

If the Appeals Administrator affirms the carrier's decision to deny disability benefits or any part thereof, an aggrieved employee may appeal to the Committee within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by filing a written petition with the Committee setting forth with particularity the grounds for appeal. The Committee may designate an appropriate officer of the ~~Office of Management and Budget~~ Department of Human Resources as a hearing officer to hear evidence presented by the participating employee or, in its sole discretion, it may decide to hear the appeal directly. The Committee or hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the applicable disability plan adopted by the Committee. The hearing officer and/or Committee shall have all of the following powers in respect to the conduct at the hearing:

Section 27. Amend §5901, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5901 Definitions.

(a) As used in this chapter, unless the context requires a different meaning:

~~(5) "Director" means the Director of the Office of Management and Budget appointed pursuant to this chapter~~.

(~~6~~5) "Merit comparable positions" means those positions which for salary determination purposes, are assigned, pursuant to the State Budget Act, classification titles and/or pay grades that are comparable to the titles and/or pay grades of similar positions in the classified service.

(~~7~~6) "Rules" means those rules adopted by the Board pursuant to this chapter.

(7) “Secretary” means the Secretary of the Department of Human Resources.

Section 28. Amend §5903, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5903 Classified service and exemptions.

Unless otherwise required by law, as used in this chapter, "classified service" or "state service" means all positions of state employment other than the following positions, which are excluded:

(16) All judges or other members of the state judiciary, referees, jurors and others appointed by the judiciary, but excluding all other employees of the Court of Common Pleas, with the exception of the Court Administrator, Deputy Court Administrator, Judicial Case Management Administrator, Judicial Operations Managers, Chief of Court Security, Chief Electronic Court Reporter, Investigative Supervisor, Controller, Management Analysts, Human Resource Specialist, Court Security Officer Supervisor, Court Security Officers I and II, and 1 judicial secretary for each judge, and the Justice of the Peace Court system with the exception of the Court Administrator, Operations Managers, Judicial Operations Managers, Investigative Supervisor, Controller, Fiscal Administrative Officer, Family Services Program Support Administrator, Management Analysts, Judicial Secretary, Administrative Specialists, Chiefs of Court Security and Human Resource Specialists. The staff attorney and law clerk positions in the Court of Common Pleas and the Justices of the Peace Courts shall be exempt positions and shall be excluded from classified service. Any incumbent occupying a position that is "classified" by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources in compliance with this section shall be considered qualified without further testing, and shall be continued in the position without loss of compensation. Future hirees into any classified position in the Justice of the Peace Courts vacated subsequent to July 15, 1976, will be made in accordance with this chapter.

(17) c. Agencies that experience circumstances that require the use of casual seasonal employees that are not defined in subsection (a) of this section must submit a request to the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and the Controller General for approval. Upon completion of 1 year of work from casual seasonal employee, the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and the Controller General must review the agency need for such casual seasonal employment.

(23) Positions designated as exempt by either the determination by the Secretary of the Department of

Human Resources, the Director of the Office of Management and Budget and Controller General or via budget epilogue language.

Any classified employee leaving the classified service to accept a position under paragraph (4), (5), (6) or (23) of this section shall automatically be granted an extended leave of absence. Upon completion of such appointment, the ~~Director of the Office of Management and Budget~~ Secretary shall place the employee in a classified position for which the employee meets minimum qualifications in the same or a lower pay-grade as the position that the employee held when leaving the classified service. The salary shall be paid at no less than the equivalent pay grade and percentage of the pay grade midpoint from which the employee took this leave of absence.

Section 29. Amend §5904, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5904 Classification of exempt employees.

Any employee whose position has been in an exempt status under § 5903(4) and (5) of this title who, as the result of a reorganization of state government approved by the General Assembly, is thereafter assigned to a position in the classified service, shall have such position classified by the ~~Director of the Office of Management and Budget~~ Secretary and an appropriate title and pay grade assigned thereto, in accordance with this chapter and the rules and regulations promulgated under this chapter. Any such employee shall be continued in such employee's newly assigned position without an examination requirement, unless subsequently separated from such position as provided by law.

Section 30. Amend §5904A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5904A Exceptional employment.

Employment of persons with mental or physical disabilities in a Selective Placement Program or an Agency Aide Program shall be administered by the ~~Human Resource Management Administrator~~ Director of Personnel Management or their designee. Such employment shall be by appointment without competitive recruitment and without listing on a referral list. Employment through the Selective Placement Program is limited to 12 months. Each appointee in the Selective Placement Program who successfully completes a trial work period, or passes a competitive examination, may be considered for permanent employment or probationary employment in the classified service. An appointment through the Agency Aide Program is of indefinite duration. Before any

appointment is made, the ~~Human Resource Management Administrator~~ Director of Personnel Management or their designee shall advise the applicant of the availability of benefits counseling resources, which offer information or guidance on the effect of employment on public benefits including income from the Social Security Administration.

Section 31. Amend §5906, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5906 Composition of the Merit Employee Relations Board.

(c) The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources, or ~~the Director's~~ their designee, shall be the liaison between the Board and the ~~Office of Management and Budget~~ Department of Human Resources and shall attend all meetings of the Board. The ~~Director~~ Secretary shall not participate in the deliberation of any cases before the Board, nor sit with members of the Board, during the hearing or deliberations. The ~~Director~~ Secretary or ~~the Director's~~ their designee shall be limited to representing and/or testifying on behalf of the ~~Office of Management and Budget~~ Department of Human Resources and other state agencies before the Board.

(d) The Merit Employee Relations Board shall have clerical and legal support staff separate from the staff of the ~~Office of Management and Budget~~ Department of Human Resources, and such staff shall be located separate from the ~~Office of Management and Budget~~ Department of Human Resources.

Section 32. Amend §5907, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5907 Powers, duties and functions of the Board.

In addition to the duties set forth elsewhere in this chapter, and consistent with the right of public employees to organize under Chapter 13 of Title 19, the Board shall:

(1) Request that the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources investigate problems or complaints arising from the implementation of the Merit System and the effect of merit policies and procedures on employees in the classified service;

(3) Require the ~~Director~~ Secretary to submit all proposed Merit Rule revisions to the statewide Labor-Management Committee for review and comment prior to submission to the Board for public hearing and adoption; and

Section 33. Amend §5908, Title 29 of the Delaware Code by making deletions as shown by strikethrough

and insertions as shown by underline as follows:

§ 5908 Organization and meetings of the Board.

(a) The Board shall meet as often as necessary to assure the timely disposition of cases. The Chair shall cause reasonable notice to be given to each Board member and the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources of the time and place of each meeting. Three members shall constitute a quorum for the transaction of business at any meeting.

Section 34. Amend §5910, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

~~§ 5910 Deputy .~~

~~The Director may designate 1 or more employees to act as the Director's deputy or deputies. At least 1 such deputy shall assist the Director with administration of the merit system insofar as it applies to the federally-aided agencies referred to in § 5952 of this title. In case of the Director's absence or inability to act, the Director's powers and duties shall devolve upon the deputy designated for such purpose.~~

Section 35. Amend §5914, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5914 Rules; hearing; adoption.

The ~~Director~~ Secretary shall prepare and submit to the Board proposed rules covering the classified service. The rules shall be reviewed by the Board at a public hearing held following public notice. The rules, as proposed by the ~~Director~~Secretary, shall become final upon the completion of the public hearing, unless rejected by a majority of the members appointed to the Board.

Section 36. Amend §5915, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5915 Classification; uniformity; appeal of classification.

(b) After approval of such maintenance review classifications determination by the Secretary of the Department of Human Resources and the Director of the Office of Management and Budget and Controller General, the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources shall notify the agency and employee of the results. The maintenance review classification determination shall become effective on the following July 1.

(d) Within 10 calendar days of the filing of an appeal, the Board shall assign an independent reviewer,

trained in job analysis, to evaluate the merits of the employee's appeal. Within 30 calendar days, the independent reviewer must submit a written independent finding to the Board, and copy to the employee and the ~~Director of the Office of Management and Budget~~ Secretary. In unusual circumstances, the Board may authorize the independent reviewer an additional 30 calendar days to complete the review.

(e) The employee and the ~~Director of the Office of Management and Budget~~ Secretary shall have 30 calendar days to accept the finding rendered by the independent reviewer and notify the Board.

(f) If the findings of the independent reviewer are accepted by the employee and the ~~Director of the Office of Management and Budget~~ Secretary, the Board shall also accept the findings.

(g) If these findings are ignored or disputed by either the employee or the ~~Director of the Office of Management and Budget~~ Secretary, the parties shall be notified and permitted to respond and the Board shall hold a hearing on the employee's appeal within 60 calendar days.

(i) The Board shall render a final and binding decision on the matter within 15 calendar days of the hearing. In rendering its decision, the Board shall consider the following criteria:

(2) The ~~Director's~~ Secretary's initial determination;

(3) The ~~Director's~~ Secretary's response to the independent reviewer's findings;

(k) In the event that the ~~Director's~~ Secretary can demonstrate that sufficient funds are not available to fund the classification decisions rendered by this section, the effective date may be delayed until the beginning of the next fiscal year.

Section 37. Amend §5916, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5916 Uniform pay plan; hazardous duty pay.

(b) No agency shall engage a consultant or authorize expenditures of any General or Special Funds for the purpose of studying personnel policies and/or the wage and salary classification of employees without the written authorization of the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and the concurrence of the Controller General.

(d) A state employee may perform additional duties for a state agency other than that employee's principal employing agency, with the consent of that employee's principal employing agency, and may be paid additional compensation, provided such additional duties are not a part of that employee's regular duties for the principal employing agency and not rendered during the time paid for by the principal employing agency. All

wage payments resulting from the performance of such additional duties, including FLSA overtime, shall be the responsibility of the secondary employing agency unless otherwise authorized by the Director of the Office of Management and Budget and the Secretary of the Department of Human Resources.

(f) Nothing in this section shall be construed or interpreted by the Merit Employee Relations Board or by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources to include hazardous duty pay as coming within the definition of fringe benefits.

Section 38. Amend §5917, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5917 Competitive recruitment.

(b) The ~~Director of Management and Budget~~ Secretary of the Department of Human Resources shall maintain a listing of those positions in the classified service that require the administration of a competitive examination. Examinations may be written or oral, or a combination of both, or they may be unassembled examinations, in which case the examining authority may evaluate specialized training and experience. Examinations shall be prepared by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources, after consultation with the appointing authority where appropriate.

Section 39. Amend §5918, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5918 Promotions.

The rules shall provide for promotions, giving consideration to the applicant's qualifications, performance record, seniority, conduct and, where practicable, to the results of competitive recruitment. Vacancies shall be filled by promotion whenever practicable and in the best interest of the classified service. Any promotional competition for a position funded solely by general funded appropriations, involving 2 or more candidates and a referral list issued by the ~~Director~~ Secretary, shall be considered a competitive recruitment under § 5917 of this title.

Section 40. Amend §5920, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5920 Rejection for unfitness.

The rules shall provide for the rejection of candidates or eligibles who fail to comply with reasonable requirements of the ~~Director~~ Secretary in regard to such factors as age, physical condition, training and

experience, or who have been guilty of infamous or disgraceful conduct, are addicted to alcohol or to narcotics or have attempted any deception or fraud in connection with an recruitment.

Section 41. Amend §5923, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5923 Emergency employment.

The rules shall provide for emergency employment for not over 30 days, with or without competition, with the consent of the ~~Director~~ Secretary.

Section 42. Amend §5924, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5924 Department of Technology and Information's acceptable use policy.

The ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources shall ensure that each merit employee signs a copy of the Department of Technology and Information's acceptable use policy and that the signed copy is placed in each employee's personnel file. If an investigation concludes that a merit employee has violated that policy, any discipline resulting in the loss of wages must first be reviewed by the ~~Office of Management and Budget~~ Department of Human Resources prior to implementation of the discipline.

Section 43. Amend §5926, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5926 Reinstatement.

The rules shall provide for reinstatement within 2 years, with the approval of the ~~Director~~ Secretary, of persons who resign in good standing or who are laid off without fault or delinquency on their part.

Section 44. Amend §5931, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5931 Grievances.

(a) The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final 2 steps of any such plan shall provide for hearings before the ~~Director~~ Secretary or the ~~Director's~~ Secretary's designee and before the Board, respectively, unless a particular grievance is specifically excluded or limited by the Merit Rules. The ~~Director~~ Secretary and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or otherwise make employees whole, under a

misapplication of any provision of this chapter or the Merit Rules. The rules shall require that the Board take final action on a grievance within 90 calendar days of submission to the Board. Upon approval of all parties, the 90 days may be extended an additional 30 calendar days.

(c) No state employee shall be discharged, threatened or otherwise retaliated against with respect to the terms or conditions of their employment due to the exercise of their rights under the grievance and complaint procedure established under subsection (a) of this section.

(1) An employee who alleges a violation of this subsection may file a written complaint directly to the ~~Human Resource Management Administrator~~ Department of Human Resources. The employee and the ~~Director~~ Secretary or designee may agree to meet and attempt an informal resolution of the complaint, and/or the ~~Director~~ Secretary or designee shall hear the complaint and issue a written decision within 45 days of the complaint's receipt. Such decision shall be final and binding on the employee's appointing authority.

(3) If the complainant employee is not satisfied with the ~~Director~~ Secretary or designee's decision, the employee may submit a written appeal to the Merit Employee Relations Board (MERB) within 20 calendar days of receipt of that decision. Such appeal shall be handled and processed in the same manner as other appeals heard by the MERB.

Section 45. Amend §5933, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5933 Leaves.

(d) The ~~Director of the Office of Management and Budget~~ Secretary shall promulgate such rules and regulations as may be required to administer this act and shall periodically review and recommend other state employees engaged in hazardous duty assignments for inclusion for coverage under this section.

(e) Notwithstanding subsection (a) of this section, any employee who suffers a serious illness or injury in the line of duty that is caused or contributed to by war or act of war (declared or not), who is a member of the United States Military or National Guard shall not be charged sick leave for recovery for medical procedures or operations resulting from said injury or illness for a period of 6 months. To be eligible for this category of leave the employee shall have returned to active state employment status for a period of not less than 30 calendar days and shall have completed any necessary certification established by the ~~Director of Office of Management and Budget~~ Secretary. The eligibility for such period of leave shall not be longer than 6 consecutive months and shall be invoked within the first year of return to active employment status. In extraordinary circumstances, approval

may be sought from the ~~Director of the Office of Management and Budget~~ Secretary to use said consecutive leave on an intermittent basis. All benefits and rights within this subsection shall exhaust within the first year of return to active employment status. The ~~Director of the Office of Management and Budget~~ Secretary shall be authorized to establish rules and procedures consistent with this subsection.

Section 46. Amend §5938, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5938 Collective bargaining.

(e) The ~~Director~~ Secretary or their designee and the Board shall meet with the exclusive bargaining representative at reasonable times to negotiate in good faith with respect to any rule to be adopted or amended under §§ 5915 through 5921, 5933, 5935 and 5937 of this title and, to the extent the subject thereof is not covered in whole or in part by a collective bargaining agreement under Chapter 13 of Title 19, §§ 5922 through 5932, 5934 and 5936 of this title.

Section 47. Amend §5941, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5941 Duties of state officers and employees.

All officers and employees of the State shall comply with and aid in all proper ways in carrying out this chapter and the rules, regulations and orders thereunder. All officers and employees shall furnish any records or information which the ~~Director~~ Secretary or the Board may request for any purpose of this chapter. The ~~Director~~ Secretary, with the approval of the Board, may institute and maintain any action or proceeding at law or in equity that the ~~Director~~ Secretary considers necessary or appropriate to secure compliance with this chapter and the rules, regulations and orders thereunder.

Section 48. Amend §5943, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5943 Enforcement of chapter by legal action.

(a) The exclusive remedy available to a classified employee for the redress of an alleged wrong, arising under a misapplication of any provision of this chapter, the merit rules or the ~~Director's~~ Secretary’s regulations adopted thereunder, is to file a grievance in accordance with the procedure stated in the merit rules. Standing of a classified employee to maintain a grievance shall be limited to an alleged wrong that affects his or her status in his or her present position.

(b) Any Delaware resident or state employee may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of this chapter, the merit rules or the ~~Director's~~ Secretary's regulations adopted thereunder. Jurisdiction for such action shall lie in the Chancery Court.

(c) The State may maintain an action for the reimbursement of wages, benefits or both, paid contrary to this chapter, the merit rules or the ~~Director's~~ Secretary's regulations adopted thereunder, against the recipient employee. All moneys recovered in such action shall be paid to the State Treasury and credited to the account from which original payments had been drawn. The appointing authority may take disciplinary action against any employee in the classified service who negligently prepared the document authorizing the overpayment of wages, benefits or both, contrary to any provision of this chapter, the merit rules or the ~~Director's~~ Secretary's regulations adopted thereunder. Disciplinary action shall not be taken against any employee in the classified service who merely approved such document authorizing overpayment unless the person so approving participated in the preparation of such document.

(d) Any person appointed or employed in contravention of any provision of this chapter, the merit rules or the ~~Director's~~ Secretary's regulations adopted thereunder, who performs services for which such person is not paid, may maintain an action against any officer or officers who purported to so appoint or employ such person to recover the agreed wages, benefits or both, or the reasonable value thereof, if no pay was agreed upon, plus interest, court costs and reasonable attorney's fees.

(f) For the purpose of subsections (d) and (e) of this section, the ~~Director of the Office of Management and Budget~~ Secretary or the ~~Director's~~ Secretary's designee shall determine whether an employee is properly appointed. The ~~Director~~ Secretary or the ~~Director's~~ Secretary's designee shall certify the appointment by approving the state personnel transaction supplied by the agency. The approval of the ~~Director~~ Secretary or the ~~Director's~~ Secretary's designee shall relieve any officer or appointing authority from liability because of an improper appointment, except where the improper appointment was effected through the fraud of any officer or appointing authority. The approval of the ~~Director~~ Secretary or the ~~Director's~~ Secretary's designee shall similarly relieve any officer or appointing authority from liability for the payment of wages, benefits or both arising under subsection (d) or subsection (e) of this section, except where the officer or appointing authority is grossly negligent in disregarding any provision of this chapter, the merit rules or the ~~Director's~~ Secretary's regulations adopted thereunder. Such approval by the ~~Director~~ Secretary or the ~~Director's~~ Secretary's designee shall not prevent the appointing authority from taking disciplinary action against any employee in the classified service

who negligently prepared the document authorizing the overpayment of wages, benefits or both.

Section 49. Amend §5944, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5944 Oaths, testimony and the production of records.

The Board, each Board member and the ~~Director~~ Secretary shall have power to administer oaths, subpoena witnesses and compel the production of books and papers relevant to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers relevant to any such investigation or hearing may be compelled to do so by order of the Superior Court.

Section 50. Amend §5948, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5948 Records of Board.

The Board's records, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection subject to reasonable regulations as to the time and manner of inspection as may be prescribed by the ~~Director~~ Secretary. Reports concerning character, personal history and health of employees or applicants for employment shall be held confidential except when a majority of the Board shall find it to be in the public interest that the same shall be open to public inspection.

Section 51. Amend §5950, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5950 Employee recognition.

(a) It shall be part of the function of state agencies to conduct employee recognition programs for Merit System employees and employees in positions that are assigned comparable Merit System classes or pay grades.

All such employee recognition programs shall be approved by the ~~Director of the Office of Management and Budget~~ Secretary of the Department of Human Resources prior to implementation.

Section 52. Amend §5951, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5951 Services to political subdivisions and excluded agencies.

Subject to approval of the Board, which shall take into account the primary responsibility of the ~~Director~~

Secretary towards the classified service, the ~~Director~~ Secretary may enter into agreements with any agency excluded from this chapter, or with any municipality or other political subdivision of this State to furnish services and facilities of the Board to such agency, municipality or political subdivision in the administration of its personnel according to merit principles. Any such agreement shall provide for the reimbursement to the State of the reasonable cost of the services and facilities furnished, as determined by the ~~Director~~ Secretary. All excluded agencies and all municipalities and political subdivisions of the State are authorized to enter into such agreements.

Section 53. Amend §5955, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5955 Federal Fair Labor Standards Act; application to state personnel practices and merit system rules.

Notwithstanding any other provision of state law, the federal Fair Labor Standards Act, Chapter 2 of Title 29 of the United States Code, shall supersede state law relating to state personnel practices and shall supersede the rules adopted by the Merit Employee Relations Board pursuant to this chapter, but only to the extent such state law or merit rules are in conflict with the Fair Labor Standards Act [29 U.S.C. § 201 et seq.]. This supersession of state law and the merit system rules shall continue in effect only so long as, and only to the extent that, the provisions of the federal Fair Labor Standards Act [29 U.S.C. § 201 et seq.], by their own terms or by judicial interpretation, are deemed to apply to state government personnel practices. To the extent necessary for state compliance with the Fair Labor Standards Act, the ~~Director of the Office of Management and Budget~~ Secretary shall have the authority to implement this section, including, but not limited to, the authority to determine where conflicts exist between state law or merit rules and the federal act, and to resolve such conflicts by appropriate rulings and regulations.

Section 54. Amend §5956, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5956 Donated leave program.

(a) An officer or employee of this State, with the approval of his or her immediate supervisor or the Director of the Division in which he or she is employed, may donate accrued sick leave and annual leave in equal amounts to a Leave Bank established by the ~~Director of the Office of Management and Budget~~ Secretary for all officers or employees of this State or to another officer or employee of this State.

(b) A person wishing to donate leave time under this section may request the ~~Director of the Office of Management and Budget~~ Secretary to debit the donor's sick leave and annual leave accounts.

(d) The ~~Director of the Office of Management and Budget~~ Secretary shall convert the donated leave into cash value at the donor's rate of pay, shall re-convert the cash value to hours of leave at the recipient's rate of pay, and shall then credit the recipient's account.

(g) The ~~Director of the Office of Management and Budget~~ Secretary shall have the authority to carry out the mandates of this section.

Section 55. Amend §6071, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6071 Establishment [Fund suspended effective July 1, 2009; see 80 Del. Laws, c. 298, § 66]

(a) The First State Quality Improvement Fund is hereby established within the ~~Office of Management and Budget~~ Department of Human Resources.

Section 56. Amend §6404, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 6404 General provisions.

(e)(1) Where the number of employee positions has been set forth in the salary line appropriation for an agency in § 1 of the Budget Appropriation Bill, such number shall be interpreted to mean equivalent full –time positions. The ~~Human Resources Management Administrator of the~~ Office of Management and Budget shall maintain a listing of the employee positions as provided, the salary or wage for each position, and the source of funding. A report of this listing shall be furnished monthly by the Director of the Office of Management and Budget to the Controller General. The total of such salaries and wages for each agency shall not exceed the agency appropriation therefore and the number of employee positions shall not be changed except as provided in paragraph (e)(2) of this section. During the period when recruit classes for State Police are in training, the total number of employees shall apply only to uniformed personnel authorized for duty.

Section 57. Amend §9015, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9015 Budgeting and financing.

(d) For the purpose of retaining and attracting experienced investigation and treatment workers in the Division of Family Services, the Division may competitively recruit for Family Crisis Therapists in their investigation and treatment units. Current Division employees who successfully apply for these positions shall have their position reclassified to Family Crisis Therapist. Such reclassifications or reclassifications of vacant

positions to Family Crisis Therapist shall be effective upon the approval of Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and the Controller General. The Division is authorized to transfer positions between budget units in order to adjust its complement to ensure the correct number of fully functioning employees are in each functional unit of the Division. The Division shall submit a quarterly report to the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget and the Controller General detailing any adjustments to the complement, the number of Family Crisis Therapists hired and retention statistics.

Section 58. Amend §9010C, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9010C Exemptions from the merit system.

(b) The CIO, with the advice of the ~~Human Resources Management Administrator of the Office of Management and Budget~~ Secretary of the Department of Human Resources, shall create a compensation plan. Implementation of said plan shall be contingent upon approval by the Director of the Office of Management and Budget and Controller General. Any proposed compensation plan within the Department of Technology and Information should be unique to information technology employees working at the Department and consider all factors including areas requiring specialized skill sets and other elements of providing a comprehensive technology service organization consistent with the recommendations of the Information Services Task Force. Such a plan may include competency-based pay, pay-for-performance and other components necessary to recruit and retain highly qualified information technology professionals to the State.

Section 59. Amend §9602, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9602 State Employee Benefits Committee.

(a) There is hereby established a State Employee Benefits Committee ("Committee"). The Committee shall be comprised of the Lieutenant Governor, the Insurance Commissioner, the Chief Justice of the Supreme Court, the State Treasurer, the Director of the Office of Management and Budget, the Controller General, ~~the Secretary of Finance~~ the Secretary of the Department of Human Resources and the Secretary of Health and Social Services, or their designees. In addition, the Governor shall appoint 1 Committee member from the following persons: The President of the Delaware State Education Association or his or her designee, the Executive Director of the American Federation of State County and Municipal Employees or his or her designee, the President of the

Correctional Officers Association of Delaware or his or her designee, or the President of the Delaware State Troopers Association or his or her designee. The appointment term shall be for 3 years. An organizational representative appointed by the Governor, after serving a 3-year term, shall not serve another term until all the organizational representatives named in this subsection have served a 3-year term. The Director of the Office of Management and Budget and the Secretary of Human Resources shall co-chair the Committee.

(c) All members of the Committee and all legal, actuarial and administrative personnel shall be entitled to reimbursement for those travel and other expenses made necessary by their official duties that are approved by the ~~Benefits and Insurance Administrator~~ Director of Statewide Benefits.

Section 60. Amend §9604, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9604 Duties of the ~~Director of the Office of Management and Budget~~ Secretary of Human Resources.

The duties of the ~~Director of the Office of Management and Budget~~ Secretary of Human Resources under this chapter shall include:

Section 61. Amend §10403, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 10403 Definitions [For application of this section, see 80 Del. Laws, c. 112, § 7; and 80 Del. Laws, c. 113, § 8]

As used in this chapter:

(3) "Executive Branch agency" means, for purposes of this chapter only, the Department of Agriculture, Department of Correction, Delaware Economic Development Office, Delaware National Guard, Delaware State Housing Authority, Department of Education, Department of Finance, Department of Health and Social Services, Department of Labor, Office of Management and Budget, Department of Natural Resources and Environmental Control, Department of Safety and Homeland Security, Department of Services for Children, Youth and Their Families, Department of State, Department of Technology and Information, Department of Human Resources and Department of Transportation.

Section 62. Amend §1303, Title 31 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1303 Duties of Coordinator.

The Coordinator shall coordinate contact with, and referrals to, programs applicable to displaced

homemakers which shall include:

c. Utilization of the services of the ~~Office of Management and Budget~~ Department of Human Resources, which shall cooperate with the Department in locating employment opportunities;

Section 63. The Secretary of the Department of Human Resources shall work in cooperation with all state agencies to develop a detailed plan of implementation centralizing all agency human resources employees under the Department of Human Resources. This plan shall include but not be limited to all budgetary, operational, and regulatory changes necessary to implement such a centralization as well as proposed service level agreements with state agencies to ensure continued operations. Said plan shall be implemented no later than June 30, 2018.

Section 64. Any rules and regulations of any agency, department, office, board, commission or officer thereof affected by or mentioned in this Act, which were promulgated prior to the effective date of this act, shall remain in full force and effect until otherwise modified in accordance with Delaware law; provided that if any rule or regulation heretofore adopted shall conflict with any of the provisions of this act, the language contained in this act shall prevail over that contained in such rule or regulation.

Section 65. If any provision of this Act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this Act and the application of such provisions of this Act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 66. The provisions of this legislation shall be effective July 1, 2017.

Ssynopsis

This legislation amends the Delaware Code to establish the Department of Human Resources by transferring various divisions and other organizational units from the Office of Management and Budget to the newly established Department of Human Resources. The powers and duties of the Director of the Office of Management and Budget and the Secretary of the Department of Human Resources are aligned to reflect the transfers of the divisions and other organizational units of the newly established Department of Human Resources. Various sections of the Delaware Code are amended to reflect changes in titles and nomenclature.

Author: Senator Poore