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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

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ENROLLED

SENATE BILL NO. 297

(By Mr. Moreland)

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PASSED April 14, **1973**

In Effect from **Passage**

FILED IN THE OFFICE
EDGAR F. WEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73

297

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Senate Bill No. 297

(By Mr. Moreland)

[Passed April 14, 1973; in effect from passage.]

AN ACT to amend and reenact section eight, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the civil service system and to rules of the civil service commission; specifying that no permanent employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave under certain circumstances and with certain exceptions; and authorizing any such employee to be granted a leave of absence without pay under certain circumstances for a period not to exceed six months.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-8. Rules of commission.

1 The present merit system council rules shall be transformed
2 into the temporary rules of the civil service commission and
3 shall continue in effect until the director of personnel
4 prepares and submits to the civil service commission new
5 rules for the classified service.

6 Such new rules shall be filed and made effective in
7 conformity with the provisions of chapter twenty-nine-a of

8 this code. Amendments thereto may be made in the same
9 manner. The new rules shall provide:

10 (1) For the preparation, maintenance and revision of a
11 position classification plan for all positions in the classified
12 service, based upon similarity of duties performed and
13 responsibilities assumed, so that the same qualifications may
14 reasonably be required for and the same schedule of pay
15 may be equitably applied to all positions in the same class.
16 After such classification has been approved by the commis-
17 sion, the director shall allocate the position of every em-
18 ployee in the classified service to one of the classes in the
19 plan. Any employee affected by the allocation of a position
20 to a class shall, after filing with the director of personnel
21 a written request for reconsideration thereof in such manner
22 and form as the director may prescribe, be given a reason-
23 able opportunity to be heard thereon by the director. The
24 interested appointing authority shall be given like oppor-
25 tunity to be heard.

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

38 (3) For open competitive examinations to test the rela-
39 tive fitness of applicants for the respective positions. Such
40 examinations need not be held until after the rules have
41 been adopted, the service classified and a pay plan establish-
42 ed, but shall be held not later than one year after this
43 article takes effect. Such examinations shall be announced
44 publicly at least fifteen days in advance of the date fixed
45 for the filing of applications therefor, and may be advertis-
46 ed through the press, radio and other media. The director
47 may, however, in his discretion, continue to receive applica-
48 tions and examine candidates long enough to assure a suf-
49 ficient number of eligibles to meet the needs of the

50 service; and may add the names of successful candidates to
51 existing eligible lists in accordance with their respective
52 ratings.

53 Veterans who present proof of at least one year's
54 honorable service to the United States in either of the
55 world wars, the Korean war or the Vietnam conflict shall
56 be entitled to an additional five points on any examination
57 and disabled veterans shall be entitled to an additional
58 ten points: *Provided*, That no such additions shall be made
59 where a veteran fails to pass the examination.

60 (4) For promotions which shall give appropriate con-
61 sideration to the applicant's qualifications, record of per-
62 formance and his score on written examination, when such
63 examination is practicable. In filling vacancies an effort
64 should be made to achieve a balance between promotion
65 from within the service and the introduction into the service
66 of qualified new employees. An advancement in rank
67 or grade or an increase in salary beyond the maximum
68 fixed for the class shall constitute a promotion.

69 (5) For the establishment of eligible lists for appoint-
70 ment and promotion, upon which lists shall be placed the
71 names of successful candidates in the order of their relative
72 excellence in the respective examinations. Eligibility for
73 appointment from any such list shall continue not longer
74 than three years. An appointing authority must make his
75 selection from the top five names on the appropriate lists
76 of eligibles.

77 (6) For the rejection of candidates or eligibles who fail
78 to comply with reasonable requirements in regard to such
79 factors as age, physical condition, character, training and
80 experience, who are addicted to alcohol or narcotics, or
81 who have attempted any deception or fraud in connection
82 with an examination, or where in the judgment of the
83 commission there is reasonable doubt of the loyalty of the
84 candidate or allegiance to the nation.

85 (7) For a period of probation not to exceed one year
86 before appointment or promotion may be made complete.

87 (8) For provisional employment without competitive
88 examination when there is no appropriate eligible list
89 available. No such provisional employment shall continue
90 longer than six months, nor shall successive provisional

91 appointments be allowed, except during the first year after
92 the effective date of this article, in order to avoid stop-
93 page of orderly conduct of the business of the state.

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

101 (10) For layoffs by reason of lack of funds or work,
102 or abolition of a position, or material change in duties
103 or organization, and for reemployment of employees so laid
104 off, giving consideration in both layoffs and reemployment
105 to performance record and seniority in service.

106 (11) For discharge or reduction in rank or grade only
107 for cause of employees in the classified service. Discharge
108 or reduction of these employees shall take place only after
109 the person to be discharged or reduced has been presented
110 with the reasons for such discharge or reduction stated in
111 writing, and has been allowed a reasonable time to reply
112 thereto in writing, or upon request to appear personally
113 and reply to the head of the department or his deputy.
114 The statement of reasons and the reply shall be filed as a
115 public record with the director. Notwithstanding the fore-
116 going provisions of this subdivision, no permanent employee
117 shall be discharged from the classified service for ab-
118 senteeism upon using all entitlement to annual leave and
119 sick leave when such use has been due to illness or injury
120 as verified by a physician's certification or for other exten-
121 uating circumstances beyond the employee's control unless
122 his disability is of such a nature as to permanently incapaci-
123 tate him from the performance of the duties of his position.
124 Upon exhaustion of annual leave and sick leave credits for
125 the reasons specified herein and with certification by a
126 physician that the employee is unable to perform his duties,
127 a permanent employee shall be granted a leave of absence
128 without pay for a period not to exceed six months if such
129 employee is not permanently unable to satisfactorily per-
130 form the duties of his position.

131 (12) For such other rules and administrative regulations,

132 not inconsistent with this article, as may be proper and
133 necessary for its enforcement.

134 The commission and the director may include in the rules
135 provided for in this article such provisions as are necessary
136 to conform to regulations and standards of any federal
137 agency governing the receipt and use of federal grants-in-
138 aid by any state agency, anything in this article to the
139 contrary notwithstanding. The commission and the director
140 shall see that rules and practices meeting such standards
141 are in effect continuously after the effective date of this
142 article.

Enr. S. B. No. 297]

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

N. Darrel Darby
Chairman Senate Committee

Clarence C. Christie Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Louis J. Hanna
Speaker House of Delegates

The within *approved* this the *27th*
April
day of _____, 1973.

Richard B. Moore Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/27/73

Time 2:05 p.m.

RECEIVED

MAY 3 9 34 AM '73

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA