WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

ENROLLED
SENATE BILL NO. 297
(By Mr. Morland)

PASSED _____ April 14 _____ 1973
In Effect _____ from _____ Passage

FILER IN THE OFFICE
EDGAR E. HEBKELL III
SECRETARY OF STATE
THIS DATE 5/3/73
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 into the temporary rules of the civil service commission and shall continue in effect until the director of personnel prepares and submits to the civil service commission new rules for the classified service.

6 Such new rules shall be filed and made effective in conformity with the provisions of chapter twenty-nine-a of
this code. Amendments thereto may be made in the same manner. The new rules shall provide:

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. After such classification has been approved by the commission, the director shall allocate the position of every employee in the classified service to one of the classes in the plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

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

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio and other media. The director may, however, in his discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the
service; and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

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

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

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

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

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

(8) For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional
appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

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

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

(11) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the head of the department or his deputy. The statement of reasons and the reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave when such use has been due to illness or injury as verified by a physician's certification or for other extenuating circumstances beyond the employee's control unless his disability is of such a nature as to permanently incapacitate him from the performance of the duties of his position. Upon exhaustion of annual leave and sick leave credits for the reasons specified herein and with certification by a physician that the employee is unable to perform his duties, a permanent employee shall be granted a leave of absence without pay for a period not to exceed six months if such employee is not permanently unable to satisfactorily perform the duties of his position.

(12) For such other rules and administrative regulations,
not inconsistent with this article, as may be proper and necessary for its enforcement.

The commission and the director may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The commission and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker, House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR

Date 4/21/73
Time 2:05pm