

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1977

ENROLLED

SENATE BILL NO. 6

(By Mr. Brotherton, M. President)

PASSED May 6 1977

In Effect from Passage

100.0

ENROLLED
Senate Bill No. 6

(By MR. BROTHERTON, MR. PRESIDENT)

[Passed May 6, 1977; in effect from passage.]

AN ACT to repeal section thirty-four, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact article six, chapter twenty-nine of said code, all relating to the civil service system and classification of employees; providing a general purpose; definition of terms; establishing a classified service and classified-exempt service and providing exceptions; prohibiting additions to the classified service during certain specified periods of time; exempting policymaking positions from the classified service, including those presently so classified; providing a procedure to bring additional positions under classified service; state personnel department generally; retention of certain personnel, funds and equipment; selection and appointment of director of personnel; duties, qualifications and removal of director; continuing that state agency known as the civil service commission; establishing professional and other qualifications of members of civil service commission; providing the governor with the discretion to retain present members of the commission or to appoint new members with professional qualifications; appointment, terms, removal and compensation of members; selection of chairman and meetings of commission; advisory board; duties of commission; additional duties of director and assistants; establishment of a roster of employees; preparation and rating of tests; rules and regulations of commission; position classification plans for classified and classified-exempt service; pay plan for classified service; facilities and

equipment for department; compliance of officers and employees; status of present employees; certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll; appeals to commission and hearings; judicial review; records of department; services to political subdivisions and cooperation with other agencies; oaths, testimony and production of records; immunity from suit; refusal to testify; prohibition of favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited; certain other acts prohibited; providing penalties; appropriations to department to cover cost of administration; and acceptance of grants or contributions.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that article six, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-1. General purpose.

1 The general purpose of this article is to attract to
2 the service of this state personnel of the highest ability
3 and integrity by the establishment of a system of per-
4 sonnel administration based on merit principles and scien-
5 tific methods governing the appointment, promotion,
6 transfer, layoff, removal, discipline, classification, com-
7 pensation and welfare of its civil employees, and other
8 incidents of state employment. All appointments and
9 promotions to positions in the classified service shall be
10 made solely on the basis of merit and fitness, except as
11 hereinafter specified. All employment positions not in the
12 classified service, with the exception of the board of re-
13 gents, are included in a classification plan known as classi-
14 fied-exempt service.

§29-6-2. Definition of terms.

1 As used in this article unless the context clearly indi-
2 cates otherwise:

3 (1) "Agency" means any administrative unit of state
4 government, including any authority, board, bureau, com-
5 mission, committee, council, department or office.

6 (2) "Appointing authority" means a person or group of
7 persons authorized by an agency to make appointments to
8 positions in the classified or classified-exempt service.

9 (3) "Class" or "class of positions" means a group of
10 positions sufficiently similar in duties, training, experience
11 and responsibilities, as determined by specification, that
12 the same qualifications, the same title, and the same
13 schedule of compensation and benefits may be equitably
14 applied to each position in the group.

15 (4) "Classification plan" means the plan by which posi-
16 tions in the classified service and classified-exempt ser-
17 vice have been allocated by class.

18 (5) "Classified-exempt service" means an employee
19 whose position satisfies the definitions for "class" and
20 "classify" but who is not covered under the civil service
21 system or employed by the board of regents.

22 (6) "Classified service" means an employee whose job
23 satisfies the definitions for "class" and "classify" and who
24 is covered under the civil service system.

25 (7) "Classify" means to group all positions in classes
26 and to allocate every position to the appropriate class in
27 the classification plan.

28 (8) "Policymaking position" means a position in which
29 the person occupying it (a) acts as an adviser to, or
30 formulates plans for the implementation of broad goals
31 for, the executive or administrative head of the agency,
32 (b) is in charge of a major administrative component of
33 the agency and (c) reports directly and is directly ac-
34 countable to the administrative or executive head of the
35 agency.

36 (9) "Position" means a particular job which has been
37 classified based on specifications.

38 (10) "Specification" means a description of a class of
39 position which defines the class, provides examples of
40 work performed and the minimum qualifications required
41 for employment.

42 (11) "Veteran" means any person who has served in
43 the armed forces of the United States of America during
44 World War I (April 6, 1917—November 11, 1918), World
45 War II (December 7, 1941—December 31, 1946), the Korean
46 Conflict (June 27, 1950—January 31, 1955), or the Vietnam
47 Conflict (August 5, 1964—March 28, 1973), and who has
48 received a discharge under honorable conditions from
49 such service.

§29-6-3. Classified service.

1 The classified service includes all positions covered
2 by the present civil service system as of the thirtieth day
3 of June, one thousand nine hundred seventy-six, except
4 as otherwise provided in this article. Positions may be
5 added to the classified service as provided in section four
6 of this article.

§29-6-4. Classified-exempt service; additions to classified service; exceptions.

1 The classified-exempt service comprises all positions
2 not included in the classified service and those positions
3 specifically excepted from the classified service as pro-
4 vided in this section.

5 In no event shall persons employed by the board of
6 regents be considered as included in either the classified
7 or classified-exempt service.

8 Except for the period commencing on the first day of
9 July, one thousand nine hundred seventy-six, and ending
10 on the first Monday after the second Wednesday of the
11 following January and except for the same periods com-
12 mencing in the year one thousand nine hundred eighty
13 and in each fourth year thereafter, the governor may, by
14 executive order, with the written consent of the civil
15 service commission and the appointing authority con-
16 cerned, add to the list of positions in the classified service,
17 but such additions shall not include the following:

18 (1) The state Legislature and other officers elected by
19 popular vote and persons appointed to fill vacancies in
20 elective offices.

21 (2) Members of boards and commissions and heads of
22 departments appointed by the governor or such heads of

23 departments selected by commissions or boards when ex-
24 pressly exempt by law or board order.

25 (3) Excluding the policymaking positions in an agency,
26 one principal assistant or deputy and one private secre-
27 tary for each board or commission or head of a department
28 elected or appointed by the governor or Legislature.

29 (4) All policymaking positions.

30 (5) Not more than fifteen employees in the office of the
31 governor.

32 (6) Judges, referees, receivers, jurors and notaries
33 public.

34 (7) The secretaries and clerks of each judge of a court
35 of record.

36 (8) Patients or inmates employed in state institutions.

37 (9) Persons employed in a professional or scientific
38 capacity to make or conduct a temporary and special in-
39 quiry, investigation or examination on behalf of the
40 Legislature or a committee thereof, an executive depart-
41 ment or by authority of the governor.

42 (10) All employees assigned to the executive mansion.

43 (11) Laborers employed by any agency.

44 (12) Managers and clerks of liquor stores.

45 (13) Superintendent, county maintenance of roads, and
46 all personnel under his supervision.

47 (14) Part-time professional personnel engaged in pro-
48 fessional services without administrative duties and per-
49 sonnel employed for less than ninety working days a year.

50 (15) All clerical employees who are not under the
51 present classified system and whose jobs do not require
52 special knowledge or skill and training in the operation
53 of business machines.

54 All executive orders of the governor adding to the list
55 of positions in the classified service which were dated or
56 issued during the period commencing on the first day of
57 July, one thousand nine hundred seventy-six, and ending
58 on the first Monday after the second Wednesday of the
59 following January or which are dated or issued within
60 the same period commencing in the year one thousand
61 nine hundred eighty or in each fourth year thereafter,

62 shall be null and void, and no person occupying a position
63 added by such executive order to the list of positions in
64 the classified service shall be entitled on account of such
65 order to any right bestowed upon any position or person
66 within the classified service by the provisions of this
67 article or by any rule or regulation promulgated there-
68 under.

69 Nothing herein shall be construed as precluding the
70 appointing authorities from filling any classified-exempt
71 position in the manner in which positions in the classified
72 service are filled.

**§29-6-5. State personnel department generally; personnel,
funds, equipment, etc.**

1 The present department of personnel of the civil ser-
2 vice system as of the effective date of this article is con-
3 tinued. The services of the employees of the present office
4 of the director of personnel shall be considered continu-
5 ous. In addition, all funds, equipment, supplies, personnel
6 and property records, or anything of value now in the
7 possession of the state personnel department shall re-
8 main therein.

**§29-6-6. Selection and appointment of director of personnel;
duties; qualifications; removal.**

1 After selection through open competitive examination,
2 then upon recommendation of the civil service commis-
3 sion, the governor shall appoint a director of personnel,
4 who shall be experienced in the field of personnel admin-
5 istration, and who shall be knowledgeable concerning
6 scientific methods governing the appointment, promotion,
7 transfer, layoff, removal, discipline, classification, com-
8 pensation and welfare of employees, and who is in known
9 sympathy with the application of merit principles in
10 public employment. The selection and appointment must
11 be in conformity with civil service rules. The present
12 director of personnel may be the appointee. It shall be
13 his duty to administer this article so as to effectuate the
14 general purpose of such article as set forth in section one
15 hereof. The director of personnel may be removed by the
16 civil service commission for cause only after he has been

17 presented in writing with the reasons for his removal. He
18 shall be given an opportunity, not less than fifteen days,
19 to answer any charges either in writing or upon his re-
20 quest to be heard by the commission. The statement of
21 reasons and answer or transcript of hearing shall be filed
22 with the secretary of state as a public record. The deci-
23 sion of the commission, after a hearing, shall be final and
24 not subject to appeal.

25 None of the provisions of section two-a, article seven,
26 chapter six of this code, except the annual salary pro-
27 vision, shall be applicable to the director of personnel of
28 the civil service system.

**§29-6-7. Civil service commission; qualifications of members;
vacancies; appointment and terms of members;
removal; compensation; chairman; meetings; advi-
sory board.**

1 (a) That agency of state government heretofore estab-
2 lished and known as the civil service commission shall
3 continue to exist. The commission shall consist of three
4 members with the following qualifications: One shall be a
5 person with professional experience in the personnel
6 matters of business and industry; one with such experience
7 in the field of government personnel administration; and
8 one with such experience in the field of labor.

9 Of the three members of the commission: One shall
10 serve for a term ending on the thirtieth day of June, one
11 thousand nine hundred eighty; one for a term ending on
12 the thirtieth day of June, one thousand nine hundred
13 eighty-one; and one for a term ending on the thirtieth day
14 of June, one thousand nine hundred eighty-two. There-
15 after, each member of the commission shall be appointed
16 for a term ending six years from the date of expiration of
17 the term for which his predecessor was appointed, ex-
18 cept that a person appointed to fill a vacancy occurring
19 prior to the expiration of such term shall be appointed
20 for the remainder of the term. Each member of the
21 commission shall hold office until his successor is ap-
22 pointed and qualified.

23 The members of the civil service commission shall be
24 persons in sympathy with the application of merit prin-

25 ciples to public employment. No member of the com-
26 mission shall be a member of any local, state, or national
27 committee of a political party or an officer or member
28 of a committee in any partisan political club or organiza-
29 tion or shall hold, or be a candidate for, any paid public
30 office. Not more than two members of the same political
31 party shall serve on the commission at the same time.

32 (b) The governor shall nominate, and by and with the
33 advice and consent of the Senate, appoint the members of
34 the commission. On or after the effective date of this
35 article, the governor may continue in office any member
36 of the commission previously appointed for the term to
37 which such member was appointed, notwithstanding the
38 qualifications established in subsection (a) of this section;
39 or the governor may appoint to complete such term a
40 new member who shall meet such professional qualifica-
41 tions.

42 (c) Except as permitted by subsection (b) of this
43 section, a member of the commission may not be re-
44 moved from office except for official misconduct, incom-
45 petence, neglect of duty, gross immorality or malfeas-
46 ance, and then only in the manner prescribed in article
47 six, chapter six of this code for the removal by the
48 governor of state elected officers.

49 (d) Members of the commission shall each be paid
50 seventy-five dollars for each day devoted to the work
51 of the commission, but not more than one thousand eight
52 hundred dollars in any one fiscal year. Each member
53 shall be reimbursed for all reasonable and necessary ex-
54 penses actually incurred in the performance of his duties,
55 except that in the event the expenses are paid, or are
56 to be paid, by a third party, the members shall not be
57 reimbursed by the state.

58 (e) The commission shall elect one of its members
59 chairman. It shall meet at such time and place as shall
60 be specified by call of the chairman or the director of
61 personnel. At least one meeting shall be held in each
62 month. All meetings shall be open to the public. Notice
63 of each meeting shall be given in writing to each member
64 by the director at least three days in advance of the

65 meeting. Two members shall constitute a quorum for
66 the transaction of business.

67 (f) There is hereby created an advisory board to advise
68 the commission and the director in the administration of
69 this article. The advisory board shall consist of the ap-
70 pointing authorities from all agencies having employees
71 in the classified service.

§29-6-8. Duties of commission generally.

1 In addition to the duties expressly set forth elsewhere
2 in this article, the commission shall:

3 (1) Represent the public interest in the improvement
4 of personnel administration in the classified service.

5 (2) Advise the governor and the director on problems
6 concerning personnel administration.

7 (3) Foster the interest of institutions of learning and
8 of industrial, civic, professional and employee organiza-
9 tions in the improvement of personnel standards in the
10 classified service.

11 (4) Make any investigation which it may consider
12 desirable concerning the administration of personnel in
13 the classified service and make recommendations to the
14 director with respect thereto.

15 (5) Make an annual report and special reports and
16 recommendations to the governor and to the Legislature.

17 (6) Approve the budget as prepared by the director
18 for administration of this article before submission to the
19 department of finance and administration.

**§29-6-9. Duties of director generally; designating employee
to act in absence of director; assistants in prepara-
tion and rating of tests.**

1 (a) The director, as executive head of the department,
2 shall direct and supervise all its administrative and tech-
3 nical activities. In addition to the duties imposed upon
4 him elsewhere in this article, it shall be his duty:

5 (1) To apply and carry out this article and the rules
6 adopted thereunder.

7 (2) To attend meetings of the commission and to act
8 as its secretary and keep minutes of its proceedings.

9 (3) To establish and maintain a roster of all employees
10 in the classified and classified-exempt service, in which
11 there shall be set forth, as to each employee, the class
12 title, pay or status, and other pertinent data.

13 (4) To appoint such employees of the department and
14 such experts and special assistants as may be necessary
15 to carry out effectively the provisions of this article.

16 (5) To foster and develop, in cooperation with appoint-
17 ing authorities and others, programs for the improvement
18 of employee effectiveness, including training, safety,
19 health, counseling and welfare.

20 (6) To make available to the public information about
21 vacancies in the classified and classified-exempt service
22 and to strive constantly to attract to the career service
23 of this state people of the highest ability.

24 (7) To investigate from time to time the operation and
25 effect of this law and of the rules made thereunder and
26 to report his findings and recommendations to the com-
27 mission and to the governor.

28 (8) To make to the commission an annual report re-
29 garding the work of the department and such special re-
30 ports as he may consider desirable.

31 (9) To prepare the annual budget for the department
32 of personnel and, when approved by the commission, sub-
33 mit it to the director of the budget.

34 (10) To perform any other lawful acts which he may
35 consider necessary or desirable to carry out the purposes
36 and provisions of this article.

37 (b) In the event of the absence of the director or his
38 inability for any cause to discharge the powers and
39 duties of his office, the commission may from time to
40 time designate in writing an employee of the department
41 to act for him. In such case, the powers and duties of the
42 director shall devolve upon such employee designated by
43 the commission.

44 (c) The director may designate appropriate persons,
45 including officers and employees in the state service, to
46 assist in the preparation and rating of tests. An appoint-
47 ing authority shall excuse any employee in his division

48 from his regular duties for the time required for his work
49 as an examiner. No officer or employee shall be entitled
50 to extra compensation for further services as an examiner
51 but shall be reimbursed for all reasonable and necessary
52 expenses actually incurred in the performance of his
53 duties as an examiner; except that in the event the ex-
54 penses are paid, or are to be paid, by a third party, re-
55 imbursement will not be made by the state.

§29-6-10. Rules of commission.

1 The commission shall have the authority to promulgate,
2 amend or repeal rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article.

5 (1) For the preparation, maintenance and revision of
6 a position classification plan for all positions in the classi-
7 fied service and a position classification plan for all posi-
8 tions in the classified-exempt service, based upon simi-
9 larity of duties performed and responsibilities assumed,
10 so that the same qualifications may reasonably be required
11 for and the same schedule of pay may be equitably ap-
12 plied to all positions in the same class. The position
13 classification plan for classified-exempt service shall be-
14 come effective not later than the first day of July, one
15 thousand nine hundred seventy-nine. Except for persons
16 employed by the board of regents, all persons receiving
17 compensation in the form of a wage or salary, funded
18 either in part or in whole by the state, shall be included
19 in either the position classification plan for classified
20 service or classified-exempt service. After each such
21 classification plan has been approved by the commission,
22 the director shall allocate the position of every employee
23 in the classified service to one of the classes in the
24 classified plan and the position of every employee in the
25 classified-exempt service to one of the positions in the
26 classified-exempt plan. Any employee affected by the
27 allocation of a position to a class shall, after filing with
28 the director of personnel a written request for reconsider-
29 ation thereof in such manner and form as the director
30 may prescribe, be given a reasonable opportunity to be
31 heard thereon by the director. The interested appointing
32 authority shall be given like opportunity to be heard.

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

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

60 An additional five points shall be awarded to the score
61 of any examination successfully completed by a veteran.
62 A disabled veteran shall be entitled to an additional ten
63 points, rather than five points as aforesaid, upon success-
64 ful completion of any examination.

65 (4) For promotions within the classified service which
66 shall give appropriate consideration to the applicant's
67 qualifications, record of performance and his score on
68 written examination, when such examination is practi-
69 cable. In filling vacancies an effort should be made to
70 achieve a balance between promotion from within the
71 service and the introduction into the service of qualified
72 new employees. An advancement in rank or grade or an

73 increase in salary beyond the maximum fixed for the
74 class shall constitute a promotion.

75 (5) For the establishment of eligible lists for ap-
76 pointment and promotion within the classified service,
77 upon which lists shall be placed the names of successful
78 candidates in the order of their relative excellence in the
79 respective examinations. Eligibility for appointment from
80 any such list shall continue not longer than three years.
81 An appointing authority shall make his selection from the
82 top five names on the appropriate lists of eligibles.

83 (6) For the rejection of candidates or eligibles within
84 the classified service who fail to comply with reasonable
85 requirements in regard to such factors as age, physical
86 condition, character, training and experience, who are
87 addicted to alcohol or narcotics, or who have attempted
88 any deception or fraud in connection with an examination,
89 or where in the judgment of the commission there is
90 reasonable doubt of the loyalty of the candidate or al-
91 legiance to the nation.

92 (7) For a period of probation not to exceed one year
93 before appointment or promotion may be made complete
94 within the classified service.

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

103 (9) For keeping records of performance of all em-
104 ployees in the classified service, which service records
105 may be considered in determining salary increases and
106 decreases provided in the pay plan; as a factor in pro-
107 motion tests; as a factor in determining the order of lay-
108 offs because of lack of funds or work and in reinstatement;
109 and as a factor in demotions, discharges and trans-
110 fers.

111 (10) For layoffs by reason of lack of funds or work, or
112 abolition of a position, or material change in duties or

113 organization, and for reemployment of employees so laid
114 off, giving consideration in both layoffs and reemploy-
115 ment to performance record and seniority within the
116 classified service.

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

143 (12) For such other rules and administrative regula-
144 tions, not inconsistent with this article, as may be proper
145 and necessary for its enforcement.

146 (13) The commission shall review and approve by
147 rules and regulations the establishment of all classified-
148 exempt positions to assure consistent interpretation of
149 the provisions of this article.

150 The commission and the director may include in the
151 rules provided for in this article such provisions as are
152 necessary to conform to regulations and standards of any

153 federal agency governing the receipt and use of federal
154 grants-in-aid by any state agency, anything in this article
155 to the contrary notwithstanding. The commission and the
156 director shall see that rules and practices meeting such
157 standards are in effect continuously after the effective
158 date of this article.

§29-6-11. Duty to furnish facilities for department's use.

1 All officers and employees of the state and of munici-
2 palities and political subdivisions of the state shall allow
3 the department the reasonable use of public buildings
4 under their control, and furnish heat, light and furniture,
5 for any examination, hearing or investigation authorized
6 by this article. The department shall pay to a municipality
7 or political subdivision the reasonable cost of any such
8 facilities furnished by it.

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

1 All officers and employees of the state shall comply
2 with and aid in all proper ways in carrying out the pro-
3 visions of this article and the rules, regulations and orders
4 thereunder. All officers and employees shall furnish any
5 records or information which the director or the com-
6 mission may request for any purpose of this article. The
7 director may institute and maintain any action or pro-
8 ceeding at law or in equity that he considers necessary
9 or appropriate to secure compliance with this article and
10 the rules and orders thereunder.

§29-6-13. Status of present employees.

1 (a) Except in the case of the removal of an employee
2 for cause and except for persons in policymaking posi-
3 tions, employees who have gained permanent status under
4 the present system of classified service as of the effective
5 date of this article will not be subject to further examina-
6 tion, except when they wish to qualify for promotion, and
7 will continue in the position they hold. Their rights as
8 permanent employees shall be continuous. Employees
9 holding provisional appointments under the present sys-

10 tem of classified service must qualify for permanent ap-
11 pointments under competitive examination.

12 (b) No person occupying a policymaking position, in-
13 cluding persons included in and qualified for the classified
14 service on the effective date of this article, shall be entitled
15 to any right bestowed upon any position or person within
16 the classified service by the provisions of this article or
17 by any rule or regulation promulgated thereunder:
18 *Provided*, That any person who, on the effective date of
19 this article, is serving in a policymaking position and is
20 included in and qualified for the classified service in any
21 agency to which the federal merit systems standards apply
22 on account of a state program financed in whole or in
23 part by federal funds shall lose no rights because of the
24 enactment of this section.

25 (c) Employees holding positions included under classi-
26 fied service by this article or placed under the same by
27 future action shall be required to take qualifying tests
28 prescribed by the director.

29 Nothing in this article shall preclude the reclassification
30 or reallocation as provided by this article of any position.

**§29-6-14. Certification of payrolls; failure of appointing au-
thority to comply with order of commission;
wrongfully withholding certification of payroll.**

1 (a) No state disbursing or auditing officer shall make
2 or approve or take any part in making or approving any
3 payment for personal service to any person holding a
4 position in the classified service unless the payroll
5 voucher or account of such pay bears the certification of
6 the director, or of his authorized agent, that the persons
7 named therein have been appointed and employed in ac-
8 cordance with the provisions of this article and the rules,
9 regulations and orders thereunder. The director may for
10 proper cause withhold certification from an entire payroll
11 or from any specific item or items thereon. The director
12 may, however, provide that certification of payrolls may
13 be made once every six months, and such certification
14 shall remain in effect except in the case of any officer
15 or employee whose status has changed after the last
16 certification of his payroll. In the latter case no voucher

17 for payment of salary to such employee shall be issued
18 or payment of salary made without further certification
19 by the director.

20 (b) If an appointing authority fails to comply with
21 an order of the commission within thirty days after a
22 hearing, he shall be personally liable to the appealing
23 employee for any salary due from the time of the final
24 order of reinstatement by the commission.

25 (c) If the director wrongfully withholds certification
26 of the payroll voucher or account of any employee, such
27 employee may maintain a proceeding in the courts to
28 compel the director to certify such payroll voucher or
29 account.

**§29-6-15. Appeals by employees to commission; hearings;
review by court of appeals.**

1 Any employee in the classified service who is dismissed
2 or demoted after completing his probationary period of
3 service or who is suspended for more than thirty days
4 in any one year, may, within thirty days after such dis-
5 missal, demotion or suspension, appeal to the commission
6 for review thereof. Upon such review, both the appealing
7 employee and the appointing authority whose action is
8 reviewed shall have the right to be heard publicly and
9 to present evidentiary facts. At the hearing of such ap-
10 peals, technical rules of evidence shall not apply. At
11 any such hearing, the burden of proof will be upon the
12 appointing authority to establish that the dismissal, demo-
13 tion or suspension was proper in all respects and that such
14 dismissal, demotion or suspension was not arbitrary or
15 capricious. Such burden shall remain with the appointing
16 authority throughout every stage of such hearing. If the
17 commission finds that the action complained of was taken
18 by the appointing authority without good cause, the em-
19 ployee shall be reinstated to his former position or a posi-
20 tion of like status and pay, without loss of pay for the period
21 of his suspension, and awarded his reasonable and neces-
22 sary attorneys fees expended therein, such fees to be
23 paid by the appointing authority. If the commission
24 finds that the action complained of and taken by the
25 appointing authority was too severe but was with good

26 cause, the commission may provide for such other remedy
27 or remedies, as may be deemed appropriate and in the
28 best interest of the parties. The commission shall ex-
29 pressly have the authority by order to provide for such
30 remedies as it may deem to be appropriate after it has
31 made a complete review of the circumstances of each
32 individual case and such remedies shall include, but not
33 be limited to, the restoration of all or part of an individ-
34 ual's back pay or wages for the period of the suspension
35 or reinstatement of an individual to his former position
36 or a position of like status and pay or reemployment to
37 any other position which in the judgment of the commis-
38 sion is in the best interest of the parties or any combina-
39 tion of such remedies. When any employee is dismissed
40 and not reinstated after such appeal, the commission in
41 its discretion may direct that his name be placed on an
42 appropriate reemployment list, for employment in any
43 similar position other than the one from which he has
44 been removed. Any final action or decision taken or made
45 hereunder shall be subject to review by the supreme
46 court of appeals, if appeal is made within sixty days of
47 the action or decision complained of.

§29-6-16. Records of state personnel department.

1 The records of the department, except such records
2 as the rules may properly require to be held confidential
3 for reasons of public policy, shall be public records and
4 shall be open to public inspection, subject to reasonable
5 regulations as to the time and manner of inspection which
6 may be prescribed by the director.

§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.

1 (a) Subject to the approval of the commission the
2 director may enter into agreements with any municipi-
3 pality or other political subdivision of the state to furnish
4 services and facilities of the department to such municipi-
5 pality or political subdivision in the administration of
6 its personnel on merit principles. Any such agreements
7 shall provide for the reimbursement to the state of the
8 reasonable cost of the services and facilities furnished,
9 as determined by the director. All municipalities and

10 political subdivisions of the state are hereby authorized
11 to enter into such agreements. Subject to the approval
12 of the commission, the director may enter into an agree-
13 ment with the state department of health for the inclu-
14 sion of personnel of local health departments under the
15 classified service system established by this article.

16 (b) The director may cooperate with governmental
17 agencies for other jurisdictions charged with personnel
18 administration in conducting joint tests and establishing
19 joint lists from which eligibles shall be certified for ap-
20 pointment in accordance with the provisions of this
21 article.

**§29-6-18. Oaths, testimony and production of records; immu-
nity from suit.**

1 The commission, each member of the commission and
2 the director shall have power to administer oaths, sub-
3 poena witnesses and compel the production of books and
4 papers pertinent to any investigation or hearing autho-
5 rized by this article. Any person who shall fail to appear
6 in response to a subpoena or to answer any question or
7 produce any books or papers pertinent to any such investi-
8 gation or hearing or who shall knowingly give false testi-
9 mony therein shall be subject to the penalty provisions
10 provided for in this article. Immunity from civil suit is
11 hereby granted for all relevant evidence offered at com-
12 mission hearings.

§29-6-19. Refusal to testify.

1 If any employee in the classified or classified-exempt
2 service shall willfully refuse or fail to appear before any
3 court or judge, any legislative committee, or any officer,
4 board or body authorized to conduct any hearing or in-
5 quiry, or having appeared shall refuse to testify or an-
6 swer any question relating to the affairs or government
7 of the state or the conduct of any state officer or employee
8 on the ground that his testimony or answers would tend
9 to incriminate him, or shall refuse to accept a grant of
10 immunity from prosecution on account of any matter
11 about which he may be asked to testify at any such hear-
12 ing or inquiry, he shall forfeit his office or position and

13 shall not be eligible thereafter for appointment to any
14 position in the classified or classified-exempt service.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

1 (a) No person shall be appointed or promoted to, or
2 demoted or dismissed from any position in the classified
3 service or in any way favored or discriminated against
4 with respect to such employment because of his political
5 or religious opinions or affiliations or race; but nothing
6 herein shall be construed as precluding the dismissal of
7 any employee who may be engaged in subversive activi-
8 ties or found disloyal to the nation.

9 (b) No person shall seek or attempt to use any po-
10 litical endorsement in connection with any appointment
11 in the classified service.

12 (c) No person shall use or promise to use, directly
13 or indirectly, any official authority or influence, whether
14 possessed or anticipated, to secure or attempt to secure
15 for any person an appointment or advantage in appoint-
16 ment to a position in the classified service, or an increase
17 in pay or other advantage in employment in any such
18 position, for the purpose of influencing the vote or po-
19 litical action of any person, or for any consideration.

20 (d) No employee in the classified service or member
21 of the commission or the director shall, directly or in-
22 directly, solicit or receive any assessment, subscription
23 or contribution, or perform any service for any political
24 party, or in any manner take part in soliciting any such
25 assessment, subscription, contribution or service of any
26 employee in the classified service.

27 (e) No employee in the classified service shall be a
28 member of any national, state or local committee of a
29 political party, or an officer or member of a committee
30 of a partisan political club, or a candidate for nomination
31 or election to any paid public office, or hold any paid
32 elective public office, or shall take any part in the man-
33 agement or affairs of any political party or in any po-
34 litical campaign, except to exercise his right as a citizen
35 privately to express his opinion and to cast his vote.

36 (f) Political participation pertaining to constitutional
37 amendments, referendums, approval of municipal ordi-
38 nances, nonpartisan activities or issues, and other similar
39 questions or activities shall not be deemed to be pro-
40 hibited by the foregoing provisions of this section.

§29-6-21. Acts prohibited.

1 (a) No person shall make any false statement, certifi-
2 cate, mark, rating or report with regard to any test,
3 certification or appointment made under any provisions
4 of this article or in any manner commit or attempt to
5 commit any fraud preventing the impartial execution of
6 this article and the rules.

7 (b) No person shall, directly or indirectly, give, render,
8 pay, offer, solicit or accept any money, or other valuable
9 consideration for or on account of any certification
10 appointment, proposed appointment, promotion or pro-
11 posed promotion to, or any advantage in, a position in
12 the classified service.

13 (c) No employee of the department, examiner, or other
14 person shall defeat, deceive or obstruct any person in his
15 right to examination, eligibility, certification or appoint-
16 ment under this article, or furnish to any person any
17 special or secret information for the purpose of affecting
18 the rights or prospects of any person with respect to
19 employment in the classified service.

§29-6-22. Penalties.

1 (a) Any person who willfully violates any provision of
2 this article or of the rules shall be guilty of a misde-
3 meanor, and, upon conviction thereof, shall be fined not
4 less than one hundred dollars nor more than five hundred
5 dollars, or imprisoned in the county jail for a period not
6 to exceed one year, or both fined and imprisoned. Juris-
7 diction under this section shall be in a court of record
8 exercising criminal jurisdiction within the county where-
9 in the offense is committed.

10 (b) Any person who is convicted of a misdemeanor
11 under this article shall, for a period of five years, be
12 ineligible for appointment to or employment in a position
13 in the classified or classified-exempt service, and if he is

14 an officer or employee of the state, shall forfeit his pres-
15 ent office or position.

**§29-6-23. Appropriations; cost of administering article; accep-
tance of grants or contribution.**

1 (a) Appropriations shall be made from the general
2 fund to the department of personnel to meet the cost of
3 administering the provisions of this article.

4 (b) The director shall maintain accurate records re-
5 flecting the cost of administering the provisions of this
6 article.

7 (c) The department is authorized and directed to
8 accept on behalf of the state any grant or contribution,
9 federal or otherwise, made to assist in meeting the cost of
10 carrying out the purposes of this article.

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

James L. Davis
Chairman Senate Committee

Clarence C. Christensen
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. C. Dillon Jr
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. B. Brotherton Jr
President of the Senate

Donald L. Ropp
Speaker House of Delegates

The within is approved this the 16

day of May, 1977.

(John) R. Rhyne
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAY 11 11 43 AM '77

OFFICE OF THE GOVERNOR

Date May 16, 1977

Time 3:15 p.m.

RECEIVED

77 MAY 17 P 1:36

OFFICE
GOV. OF STATE