WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1983

ENROLLED
Committee Substitute for
HOUSE BILL No. 104

(By Mr. Speaker, Mr. Leg.)

Passed May 31, 1983
In Effect from Passage

APPROVED AND SIGNED BY THE GOVERNOR
Date 6-14-83

OFFICE OF THE GOVERNOR
AN ACT to amend and reenact sections four, twelve and twenty, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated section four-a and section ten-a, all relating to the civil service system for employees of the state generally; the classification of employees and positions within such system; requiring the joint committee on government and finance to study civil service coverage of employees of the board of regents; the removal of the prohibition against the extension of civil service coverage to certain employees of the alcohol beverage control commissioner, the department of highways, and all custodians, janitors and laborers employed by any covered agency of the state; specifying the date by which such employees are to be placed within the classified service; specifying certain conditions with respect to the entry of all such persons and persons brought within the classified service by the provisions of certain executive orders; specifying and establishing conditions under which employees within the classified-exempt service who are laid off due to a reduction in force because of lack of funds may be rehired within the classified service; clarifying the rate of compensation with respect to such rehired employees; providing special provisions for reduction in force termination
of covered employees; requiring the director to provide instruction in civil service procedures for supervisory personnel; prohibiting favoritism or discrimination because of political or religious opinion, affiliation or race; relating to and limiting certain political activity by employees; prohibiting employees from performing services for any political party, committee or candidate for compensation other than expenses; prohibiting employees from using authority to influence political activity; prohibiting employees from coercing or commanding others to make contributions for political purposes; prohibiting a classified employee from being a candidate for or holding certain paid public offices, from being a candidate or delegate to any political party convention, or from being a member of any political party committee or a financial agent or treasurer for election purposes; allowing a classified employee to be an officer of a political club; when classified employee may be a candidate for political office; requiring employee who becomes a candidate for political office to take leave of absence; and requiring civil service commissioner to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That sections four, twelve and twenty, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections four-a and ten-a, all to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

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

1 (a) The classified-exempt service comprises all positions not included in the classified service and those positions specifically excepted from the classified service as provided in this section.

5 In no event shall persons employed by the board of regents be considered as included in either the classified or classified-exempt service: Provided, That the joint committee on government and finance shall direct a special study for the purpose of consideration by the Legislature of including any persons
The board of regents, and its advisory council of classified employees, the civil service commission, or any other state agency shall cooperate in such study as may be directed by the joint committee on government and finance. The study shall include reasonable notice and opportunities for all persons employed by the board of regents to submit data, objections, suggested proposals, evidence or comments orally or in writing concerning the issue of civil service coverage. The joint committee on government and finance shall report its findings, together with any recommendations, to the Legislature on or before the first day of the regular session in the year one thousand nine hundred eighty-four.

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

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

(2) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order.

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

(4) All policymaking positions.

(5) Not more than fifteen employees in the office of the governor.
(6) Judges, referees, receivers, jurors and notaries public.

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

(8) Patients or inmates employed in state institutions.

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor.

(10) All employees assigned to the executive mansion.

(11) Superintendents of county maintenance of roads.

(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety working days a year.

(13) Employees hired under the governor's emergency employment program of 1983, or the federal emergency jobs and humanitarian aid program of 1983.

All executive orders of the governor adding to the list of positions in the classified service which were dated or issued during the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January or which are dated or issued within the same period commencing in the year one thousand nine hundred eighty, or in each fourth year thereafter, shall be null and void, and no person occupying a position added by such executive order to the list of positions in the classified service shall be entitled on account of such order to any right bestowed upon any position or person within the classified service by the provisions of this article or by any rule or regulation promulgated thereunder.

Nothing herein shall be construed as precluding the appointing authorities from filling any classified-exempt position in the manner in which positions in the classified service are filled.
(b) All positions of managers and clerks of stores operated by the alcohol beverage control commissioner, all positions under the supervision of the several superintendents of county maintenance of roads, but not such superintendents, all custodians, janitors and laborers positions in any covered agency shall be included in the classified service effective the first day of July, one thousand nine hundred eighty-three: Provided, That any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein as of the effective date of this section, or who was required to be included in the classified service by any of the executive orders of the governor numbered 1-83, 2-83 or 3-83, dated the thirteenth day of January, one thousand nine hundred eighty-three, shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, however, That no person required to be included in the classified service by the provisions of this subsection or by any of the executive orders of the governor numbered 1-83, 2-83 or 3-83, dated the thirteenth day of January, one thousand nine hundred eighty-three, who was employed in any of the positions included herein as of the effective date of this section, shall be thereafter severed, removed or terminated in his employment prior to his entry into the classified service except for cause as if such person has been in the classified service when severed, removed or terminated.

§29-6-4a. Conditions for reinstatement of certain employees.

Any present or former employee in the classified-exempt service who is or has been laid off within the fiscal year commencing the first day of July, one thousand nine hundred eighty-two, due to a reduction in force because of a lack of funds whose position was subsequently brought within the classified service by reason of the provisions of subsection (b), section four of this article or any executive order issued pursuant to subsection (a) of said section four since the first day of July, one thousand nine hundred eighty-two, or within one year of such employee being so laid off, shall, if the employing agency of such employee rehires a
person or persons to the same or lower classification as that
given such position in the classified service have the following
special rights for reinstatement subject to the following terms
and conditions:

(1) For two years from the date of severance from em-
ployment the employee shall have the right of reinstatement
to his former or lower classification as if the employee had
not been laid off and notwithstanding any registers which
may exist for that classification: Provided, That the em-
ployee take and pass any required qualifying examination
and otherwise comply with the regulations of the civil
service commission governing employment in a position within
the classified service unless the employee is reinstated to
substantially the same work and upon such reinstatement has
at least three consecutive years of experience as an employee
of state government; and

(2) Such employee has not reached the age of seventy,
been convicted of a crime involving moral turpitude since
his layoff and has not developed by the date of his reinstate-
ment a permanent physical disability rendering him incapable
of performing his duties.

Nothing in this section shall be construed to require
that an employee who has been reinstated following a layoff
be compensated at a rate in excess of that rate of compensation
attributable to the position in the classified service to
which such employee has been reinstated, irrespective of the
position or rate of compensation held or received by such
employee prior to such layoff or that such employee had held
a higher position in the classified service prior to such layoff
and had received a higher rate of compensation.

§29-6-10a. Reduction in work force.

Notwithstanding any other provision of this article or any
rule promulgated thereunder to the contrary, an employee in
the classified service who has performed work for a reasonable
period of time in a position with a classification that is higher
than the position in which he is employed and classified may,
in the event that his regular position would be terminated as a
result of a reduction in force in his division, have the right
to request that his classification be reviewed and that he be
promoted to the higher classified position by passing a
qualifying examination for such higher position and provid-
ing sufficient evidence of his work periods and satisfactory
performance of the duties and responsibilities of the higher
classified position.

The commission shall provide by legislative rule for the
maintenance of records by all covered agencies of the work
periods and rating of job performance of employees performing
work in a position or positions with a classification that is
higher than the position in which he is employed and classi-
fied and the duration of work periods required to request
review and promotion.

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

All officers and employees of the state shall comply with
and aid in all proper ways in carrying out the provisions
of this article and the rules, regulations and orders there-
der. All officers and employees shall furnish any records
or information which the director or the commission may
request for any purpose of this article. The director may insti-
tute and maintain any action or proceeding at law or in equity
that he considers necessary or appropriate to secure compliance
with this article and the rules and orders thereunder. The di-
rector has the duty to conduct schools, seminars or classes re-
garding handling of complaints, disciplinary matters and opera-
tion of civil service system for supervisory employees of the
state. The department head of each department shall desig-
nate certain supervisory employees to attend said schools,
seminars or classes.

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

(a) No person shall be appointed or promoted to or
demoted or dismissed from any position in the classified
service or in any way favored or discriminated against with
respect to such employment because of his political or relig-
ious opinions or affiliations or race; but nothing herein shall
be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

d) No employee in the classified service or member of the commission or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

(1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee of a political party, or a financial agent or treasurer
within the meaning of the provisions of section three, four
or five-e, article eight, chapter three of this code. Other
types of partisan or nonpartisan political campaigning and
management not inconsistent with the provisions of this sub-
division and with the provisions of subsection (d) of this
section, shall be permitted.

(f) Political participation pertaining to constitutional
amendments, referendums, approval of municipal ordinances
or activities shall not be deemed to be prohibited by the fore-
going provisions of this section.

(g) Any classified employee who becomes a candidate
for any paid public office as permitted by this section shall
be placed on a leave of absence without pay for the period
of such candidacy, commencing upon the filing of the cer-
tificate of candidacy and upon such other terms and condi-
tions as may be prescribed by legislative rule to be promul-
gated by the civil service commission no later than the first
day of September, one thousand nine hundred eighty-four.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Donald Anello  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Suck O. Zip  
Clerk of the Senate

Donald L. Kopp  
Clerk of the House of Delegates

Walter B. McHale  
President of the Senate

Jim Dwyer, Jr.  
Speaker House of Delegates

The within ... approved this the 14th day of June, 1983.

John R. Regener  
Governor