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Date 6-14-83

No: 104

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1983



# ENROLLED

*Committee Substitute for*

HOUSE BILL No. 104

OFFICE  
SECY. OF STATE

83 JUN 14 10 33:42

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(By Mr. Speaker, Mr. Lee)



Passed May 31 1983

In Effect - from - Passage



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 104**

**(By MR. SPEAKER, MR. SEE, by request of the Executive)**

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[Passed May 31, 1983; in effect from passage.]

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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  
2 not included in the classified service and those positions speci-  
3 fically excepted from the classified service as provided in this  
4 section.

5 In no event shall persons employed by the board of regents  
6 be considered as included in either the classified or classified-  
7 exempt service: *Provided*, That the joint committee on govern-  
8 ment and finance shall direct a special study for the purpose  
9 of consideration by the Legislature of including any persons

10 employed by the board of regents in a civil service system.  
11 The board of regents, and its advisory council of classified  
12 employees, the civil service commission, or any other state  
13 agency shall cooperate in such study as may be directed by  
14 the joint committee on government and finance. The study  
15 shall include reasonable notice and opportunities for all per-  
16 sons employed by the board of regents to submit data, objec-  
17 tions, suggested proposals, evidence or comments orally or in  
18 writing concerning the issue of civil service coverage. The  
19 joint committee on government and finance shall report its  
20 findings, together with any recommendations, to the Legisla-  
21 ture on or before the first day of the regular session in the  
22 year one thousand nine hundred eighty-four.

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

33 (1) The state Legislature and other officers elected by  
34 popular vote and persons appointed to fill vacancies in elec-  
35 tive offices.

36 (2) Members of boards and commissions and heads of  
37 departments appointed by the governor or such heads of de-  
38 partments selected by commissions or boards when expressly  
39 exempt by law or board order.

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

44 (4) All policymaking positions.

45 (5) Not more than fifteen employees in the office of the  
46 governor.

47 (6) Judges, referees, receivers, jurors and notaries pub-  
48 lic.

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

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

52 (9) Persons employed in a professional or scientific ca-  
53 pacity to make or conduct a temporary and special inquiry,  
54 investigation or examination on behalf of the Legislature or  
55 a committee thereof, an executive department or by author-  
56 ity of the governor.

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

58 (11) Superintendents of county maintenance of roads.

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

62 (13) Employees hired under the governor's emergency em-  
63 ployment program of 1983, or the federal emergency jobs and  
64 humanitarian aid program of 1983.

65 All executive orders of the governor adding to the list  
66 of positions in the classified service which were dated or  
67 issued during the period commencing on the first day of  
68 July, one thousand nine hundred seventy-six, and ending on  
69 the first Monday after the second Wednesday of the following  
70 January or which are dated or issued within the same period  
71 commencing in the year one thousand nine hundred eighty, or  
72 in each fourth year thereafter, shall be null and void, and  
73 no person occupying a position added by such executive order  
74 to the list of positions in the classified service shall be en-  
75 titled on account of such order to any right bestowed upon  
76 any position or person within the classified service by the  
77 provisions of this article or by any rule or regulation pro-  
78 mulgated thereunder.

79 Nothing herein shall be construed as precluding the ap-  
80 pointing authorities from filling any classified-exempt posi-  
81 tion in the manner in which positions in the classified service  
82 are filled.

83 (b) All positions of managers and clerks of stores oper-  
 84 ated by the alcohol beverage control commissioner, all posi-  
 85 tions under the supervision of the several superintendents  
 86 of county maintenance of roads, but not such superintendents,  
 87 all custodians, janitors and laborers positions in any covered  
 88 agency shall be included in the classified service effective  
 89 the first day of July, one thousand nine hundred eighty-  
 90 three: *Provided*, That any person required to be included  
 91 in the classified service by the provisions of this subsec-  
 92 tion who was employed in any of the positions included herein  
 93 as of the effective date of this section, or who was required  
 94 to be included in the classified service by any of the executive  
 95 orders of the governor numbered 1-83, 2-83 or 3-83, dated the  
 96 thirteenth day of January, one thousand nine hundred eighty-  
 97 three, shall not be required to take and pass qualifying or  
 98 competitive examinations upon or as a condition to being added  
 99 to the classified service: *Provided, however*, That no person  
 100 required to be included in the classified service by the pro-  
 101 visions of this subsection or by any of the executive orders  
 102 of the governor numbered 1-83, 2-83 or 3-83, dated the  
 103 thirteenth day of January, one thousand nine hundred eighty-  
 104 three, who was employed in any of the positions included  
 105 herein as of the effective date of this section, shall be thereafter  
 106 severed, removed or terminated in his employment prior to his  
 107 entry into the classified service except for cause as if such  
 108 such person has been in the classified service when severed,  
 109 removed or terminated.

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

1 Any present or former employee in the classified-exempt  
 2 service who is or has been laid off within the fiscal year  
 3 commencing the first day of July, one thousand nine hundred  
 4 eighty-two, due to a reduction in force because of a lack of  
 5 funds whose position was subsequently brought within the  
 6 classified service by reason of the provisions of subsection  
 7 (b), section four of this article or any executive order  
 8 issued pursuant to subsection (a) of said section four since  
 9 the first day of July, one thousand nine hundred eighty-two,  
 10 or within one year of such employee being so laid off,  
 11 shall, if the employing agency of such employee rehires a

12 person or persons to the same or lower classification as that  
13 given such position in the classified service have the following  
14 special rights for reinstatement subject to the following terms  
15 and conditions:

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

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

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

**§29-6-10a. Reduction in work force.**

1 Notwithstanding any other provision of this article or any  
2 rule promulgated thereunder to the contrary, an employee in  
3 the classified service who has performed work for a reasonable  
4 period of time in a position with a classification that is higher  
5 than the position in which he is employed and classified may,  
6 in the event that his regular position would be terminated as a  
7 result of a reduction in force in his division, have the right

8 to request that his classification be reviewed and that he be  
9 promoted to the higher classified position by passing a  
10 qualifying examination for such higher position and provid-  
11 ing sufficient evidence of his work periods and satisfactory  
12 performance of the duties and responsibilities of the higher  
13 classified position.

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

**§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 with  
2 and aid in all proper ways in carrying out the provisions  
3 of this article and the rules, regulations and orders there-  
4 under. All officers and employees shall furnish any records  
5 or information which the director or the commission may  
6 request for any purpose of this article. The director may insti-  
7 tute and maintain any action or proceeding at law or in equity  
8 that he considers necessary or appropriate to secure compliance  
9 with this article and the rules and orders thereunder. The di-  
10 rector has the duty to conduct schools, seminars or classes re-  
11 garding handling of complaints, disciplinary matters and opera-  
12 tion of <sup>the</sup> civil service system for supervisory employees of the  
13 state. The department head of each department shall desig-  
14 nate certain supervisory employees to attend said schools,  
15 seminars or classes.

*see  
Sec  
211*

**§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 with  
4 respect to such employment because of his political or relig-  
5 ious opinions or affiliations or race; but nothing herein shall

6 be construed as precluding the dismissal of any employee who  
7 may be engaged in subversive activities or found disloyal to  
8 the nation.

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

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

20 (d) No employee in the classified service or member of the  
21 commission or the director shall, directly or indirectly, solicit  
22 or receive any assessment, subscription or contribution, or  
23 perform any service for any political party, committee or  
24 candidate for compensation, other than for expenses actually  
25 incurred, or in any manner take part in soliciting any such  
26 assessment, subscription, contribution or service of any em-  
27 ployee in the classified service.

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

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

33 (2) Directly or indirectly coerce, attempt to coerce, com-  
34 mand or advise a state or local officer or employee to pay,  
35 lend or contribute anything of value to a party, committee,  
36 organization, agency or person for political purposes; or

37 (3) Be a candidate for any national or state paid public  
38 office or court of record; or hold any paid public office; or be  
39 a candidate or delegate to any state or national political party  
40 convention, a member of any national, state or local com-  
41 mittee of a political party, or a financial agent or treasurer

42 within the meaning of the provisions of section three, four  
43 or five-e, article eight, chapter three of this code. Other  
44 types of partisan or nonpartisan political campaigning and  
45 management not inconsistent with the provisions of this sub-  
46 division and with the provisions of subsection (d) of this  
47 section, shall be permitted.

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

52 (g) Any classified employee who becomes a candidate  
53 for any paid public office as permitted by this section shall  
54 be placed on a leave of absence without pay for the period  
55 of such candidacy, commencing upon the filing of the cer-  
56 tificate of candidacy and upon such other terms and condi-  
57 tions as may be prescribed by legislative rule to be promul-  
58 gated by the civil service commission no later than the first  
59 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

*Ronald Anello*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Jedd C. Wilts*  
Clerk of the Senate

*Donald L. Kapp*  
Clerk of the House of Delegates  
*Warren R. McAnaw*  
President of the Senate

*W. H. DeLoach, Jr.*  
Speaker House of Delegates

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

*John D. Roper*  
Governor