

458 - Enrolled

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

SENATE BILL NO. 458

(By Senators Holmes and Tucker)

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PASSED June 14, 1987

In Effect July 1, 1987 [REDACTED]

ENROLLED
Senate Bill No. 458

(BY SENATORS HOLMES AND TUCKER)

[Passed June 14, 1987; to take effect July 1, 1987.]

AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rules promulgated by the civil service commission; changing the rules with respect to layoffs; and providing a method for recall of employees.

Be it enacted by the Legislature of West Virginia:

That section ten, 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.

§29-6-10. Rules of commission.

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

5 (1) For the preparation, maintenance and revision of a
6 position classification plan for all positions in the classified
7 service and a position classification plan for all positions in
8 the classified-exempt service, based upon similarity of
9 duties performed and responsibilities assumed, so that the
10 same qualifications may reasonably be required for and the

11 same schedule of pay may be equitably applied to all
12 positions in the same class. The position classification plan
13 for classified-exempt service shall become effective not
14 later than the first day of July, one thousand nine hundred
15 seventy-nine. Except for persons employed by the board of
16 regents, all persons receiving compensation in the form of a
17 wage or salary, funded either in part or in whole by the
18 state, shall be included in either the position classification
19 plan for classified service or classified-exempt service.
20 After each such classification plan has been approved by
21 the commission, the director shall allocate the position of
22 every employee in the classified service to one of the classes
23 in the classified plan and the position of every employee in
24 the classified-exempt service to one of the positions in the
25 classified-exempt plan. Any employee affected by the
26 allocation of a position to a class shall, after filing with the
27 director of personnel a written request for reconsideration
28 thereof in such manner and form as the director may
29 prescribe, be given a reasonable opportunity to be heard
30 thereon by the director. The interested appointing
31 authority shall be given like opportunity to be heard.

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

44 (3) For open competitive examinations to test the
45 relative fitness of applicants for the respective positions in
46 the classified service. Such examinations need not be held
47 until after the rules have been adopted, the service
48 classified and a pay plan established, but shall be held not
49 later than one year after this article takes effect. Such
50 examinations shall be announced publicly at least fifteen
51 days in advance of the date fixed for the filing of
52 applications therefor, and may be advertised through the
53 press, radio and other media. The director may, however, in

54 his discretion, continue to receive applications and examine
55 candidates long enough to assure a sufficient number of
56 eligibles to meet the needs of the service; and may add the
57 names of successful candidates to existing eligible lists in
58 accordance with their respective ratings.

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

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

74 (5) For layoffs by classification for reason of lack of
75 funds or work, or abolition of a position or material changes
76 in duties or organization or any loss of position because of
77 the provisions of this subdivision, and for recall of
78 employees so laid off, consideration shall be given to an
79 employee's seniority as measured by permanent
80 employment in the classified service or a state agency. In the
81 event that the agency wishes to lay off a more senior
82 employee, the agency must demonstrate that the senior
83 employee cannot perform any other job duties held by less
84 senior employees within that agency in the job class, or any
85 other equivalent or lower job class for which the senior
86 employee is qualified.

87 (6) For recall of employees, recall shall be by reverse
88 order of layoff to any job class that the employee has
89 previously held or a lower class in the series within the
90 agency as that job class becomes vacant. An employee will
91 retain his place on the recall list for the same period of time
92 as his seniority on the date of his layoff, or for a period of
93 two years, whichever is less. No new employees shall be
94 hired for any vacancy in his or her job class or in a lower job
95 class in the series until all eligible employees on layoff are

96 given the opportunity to refuse that job class. An employee
97 shall be recalled onto jobs within the county wherein his
98 last place of employment is located or within a county
99 contiguous thereto. Any laid-off employee who is eligible
100 for a vacant position shall be notified by certified mail of
101 the vacancy. It shall be the responsibility of the employee to
102 notify the agency of any change in his address.

103 (7) For the establishment of eligible lists for
104 appointment and promotion within the classified service,
105 upon which lists shall be placed the names of successful
106 candidates in the order of their relative excellence in the
107 respective examinations. Eligibility for appointment from
108 any such list shall continue not longer than three years. An
109 appointing authority shall make his selection from the top
110 five names on the appropriate lists of eligibles.

111 (8) For the rejection of candidates or eligibles within the
112 classified service who fail to comply with reasonable
113 requirements in regard to such factors as age, physical
114 condition, character, training and experience, who are
115 addicted to alcohol or narcotics, or who have attempted any
116 deception or fraud in connection with an examination, or
117 where in the judgment of the commission there is
118 reasonable doubt of the loyalty of the candidate or
119 allegiance to the nation.

120 (9) For a period of probation not to exceed one year
121 before appointment or promotion may be made complete
122 within the classified service.

123 (10) For provisional employment without competitive
124 examination within the classified service when there is no
125 appropriate eligible list available. No such provisional
126 employment may continue longer than six months, nor shall
127 successive provisional appointments be allowed, except
128 during the first year after the effective date of this article, in
129 order to avoid stoppage of orderly conduct of the business of
130 the state.

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

138 (12) For discharge or reduction in rank or grade only for
139 cause of employees in the classified service. Discharge or
140 reduction of these employees shall take place only after the
141 person to be discharged or reduced has been presented with
142 the reasons for such discharge or reduction stated in
143 writing, and has been allowed a reasonable time to reply
144 thereto in writing, or upon request to appear personally and
145 reply to the appointing authority or his deputy. The
146 statement of reasons and the reply shall be filed as a public
147 record with the director. Notwithstanding the foregoing
148 provisions of this subdivision, no permanent employee shall
149 be discharged from the classified service for absenteeism
150 upon using all entitlement to annual leave and sick leave
151 when such use has been due to illness or injury as verified by
152 a physician's certification or for other extenuating
153 circumstances beyond the employee's control unless his
154 disability is of such a nature as to permanently incapacitate
155 him from the performance of the duties of his position.
156 Upon exhaustion of annual leave and sick leave credits for
157 the reasons specified herein and with certification by a
158 physician that the employee is unable to perform his duties,
159 a permanent employee shall be granted a leave of absence
160 without pay for a period not to exceed six months if such
161 employee is not permanently unable to satisfactorily
162 perform the duties of his position.

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

166 (14) The commission shall review and approve by rules
167 and regulations the establishment of all classified-exempt
168 positions to assure consistent interpretation of the
169 provisions of this article.

170 The commission and the director may include in the rules
171 provided for in this article such provisions as are necessary
172 to conform to regulations and standards of any federal
173 agency governing the receipt and use of federal grants-in-
174 aid by any state agency, anything in this article to the
175 contrary notwithstanding. The commission and the director
176 shall see that rules and practices meeting such standards
177 are in effect continuously after the effective date of this
178 article.

179 (15) It is the intent of the Legislature, with the
180 amendment and reenactment of this section during the

181 regular session of the Legislature in the year one thousand
182 nine hundred eighty-seven, that rules promulgated
183 pursuant to the provisions of subdivisions (5) and (6) of this
184 section shall apply to any employee whose layoff occurs
185 after the first day of July, one thousand nine hundred
186 eighty-seven, for reasons prescribed in said subdivision (5).
187 The commission shall, after the first day of July, one
188 thousand nine hundred eighty-seven, and prior to any
189 layoffs pursuant to subdivision (5) hereof, file an emergency
190 legislative rule implementing the provisions of subdivisions
191 (5) and (6) of this section. Such emergency rule shall be in
192 accordance with the provisions of section fifteen, article
193 three, chapter twenty-nine-a of this code, and shall be
194 deemed to be necessary for the immediate preservation of
195 the public health, safety and welfare within the meaning of
196 subsection (g) of said section fifteen, without review by the
197 secretary of state: *Provided*, That the authority granted
198 under the provisions of subdivisions five and six of this
199 section and any rules promulgated thereunder shall expire
200 on the first day of January, one thousand nine hundred
201 eighty-nine.

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

Burt O. Whittier
.....
Chairman Senate Committee

J. L. Satter
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

David C. Welch
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Don Touhman
.....
President of the Senate

W. H. C. [Signature]
.....
Speaker House of Delegates

The within *disapproved* this the *27th*
day of *June* 1987.

Arthur H. [Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 6/18/87

Time 4:25 p.m.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE