WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED
SENATE BILL NO. 458

(By Senators Holmes and Tester)

PASSED June 14, 1987
In Effect July 1, 1987
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, amend or repeal rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article:

5 (1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the
same schedule of pay may be equitably applied to all
positions in the same class. The position classification plan
for classified-exempt service shall become effective not
later than the first day of July, one thousand nine hundred
seventy-nine. Except for persons employed by the board of
regents, all persons receiving compensation in the form of a
wage or salary, funded either in part or in whole by the
state, shall be included in either the position classification
plan for classified service or classified-exempt service.
After each such classification plan has been approved by
the commission, the director shall allocate the position of
every employee in the classified service to one of the classes
in the classified plan and the position of every employee in
the classified-exempt service to one of the positions in the
classified-exempt plan. Any employee affected by the
allocation of a position to a class shall, after filing with the
director of personnel a written request for reconsideration
thereof in such manner and form as the director may
prescribe, be given a reasonable opportunity to be heard
thereon by the director. The interested appointing
authority shall be given like opportunity to be heard.

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

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

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

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

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

(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his place on the recall list for the same period of time as his seniority on the date of his layoff, or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are
given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of the employee to notify the agency of any change in his address.

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

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

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

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

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

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

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

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

(15) It is the intent of the Legislature, with the amendment and reenactment of this section during the
regular session of the Legislature in the year one thousand nine hundred eighty-seven, that rules promulgated pursuant to the provisions of subdivisions (5) and (6) of this section shall apply to any employee whose layoff occurs after the first day of July, one thousand nine hundred eighty-seven, for reasons prescribed in said subdivision (5).

The commission shall, after the first day of July, one thousand nine hundred eighty-seven, and prior to any layoffs pursuant to subdivision (5) hereof, file an emergency legislative rule implementing the provisions of subdivisions (5) and (6) of this section. Such emergency rule shall be in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code, and shall be deemed to be necessary for the immediate preservation of the public health, safety and welfare within the meaning of subsection (g) of said section fifteen, without review by the secretary of state: Provided, That the authority granted under the provisions of subdivisions five and six of this section and any rules promulgated thereunder shall expire on the first day of January, one thousand nine hundred eighty-nine.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within this the 27th day of 1987.

Governor
PRESENTED TO THE
GOVERNOR
Date 6/18/37
Time 4:35 p.m.