

# 2717

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

— ● —

## ENROLLED

Com. Sub. for  
HOUSE BILL No. 2717

(By ~~Mr.~~ Del Leary + Knight )

— ● —

Passed February 29, 1988

In Effect Ninety Days From Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2717**  
**(By DELEGATES LEARY and KNIGHT)**

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[Passed February 29, 1988; in effect ninety days from passage.]

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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 promul-  
2     gate, 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  
7     classified service and a position classification plan for  
8     all positions in the classified-exempt service, based upon  
9     similarity of duties performed and responsibilities

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

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

46 (3) For open competitive examinations to test the  
47 relative fitness of applicants for the respective positions  
48 in the classified service. Such examinations need not be  
49 held until after the rules have been adopted, the service  
50 classified and a pay plan established, but shall be held

51 not later than one year after this article takes effect.  
 52 Such examinations shall be announced publicly at least  
 53 fifteen days in advance of the date fixed for the filing  
 54 of applications therefor, and may be advertised through  
 55 the press, radio and other media. The director may,  
 56 however, in his discretion, continue to receive applica-  
 57 tions and examine candidates long enough to assure a  
 58 sufficient number of eligibles to meet the needs of the  
 59 service; and may add the names of successful candidates  
 60 to existing eligible lists in accordance with their  
 61 respective ratings.

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

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

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

92 shall retain all rights of recall as hereinafter provided.

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

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

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

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

131 (10) For provisional employment without competitive

132 examination within the classified service when there is  
133 no appropriate eligible list available. No such provi-  
134 sional employment may continue longer than six  
135 months, nor shall successive provisional appointments  
136 be allowed, except during the first year after the  
137 effective date of this article, in order to avoid stoppage  
138 of orderly conduct of the business of the state.

139 (11) For keeping records of performance of all  
140 employees in the classified service, which service  
141 records may be considered in determining salary  
142 increases and decreases provided in the pay plan; as a  
143 factor in promotion tests; as a factor in determining the  
144 order of layoffs because of lack of funds or work and  
145 in reinstatement; and as a factor in demotions, dis-  
146 charges and transfers.

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

173 perform the duties of his position.

174 (13) For such other rules and administrative regula-  
175 tions, not inconsistent with this article, as may be proper  
176 and necessary for its enforcement.

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

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


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

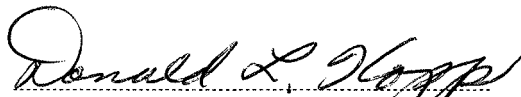
  
Chairman Senate Committee


  
Chairman House Committee

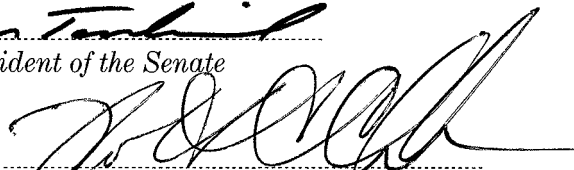
Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within  this the 10th  
day of \_\_\_\_\_, 1988.

  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/4/88

Time 2:43 p.m.

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