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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

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## ENROLLED

SENATE BILL NO. 602

(By Senator Spears, et al)

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PASSED March 2, 1992

In Effect July 1, 1992 ~~Passage~~

## ENROLLED

### Senate Bill No. 602

(BY SENATORS SPEARS, WIEDEBUSCH, LUCHT, BOLEY,  
CHERNENKO, TOMBLIN, BRACKENRICH, J. MANCHIN,  
FELTON, JONES, CRAIGO, CLAYPOLE, HOLLIDAY AND WEHRLE)

[Passed March 7, 1992; to take effect July 1, 1992.]

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 giving preferential recall rights to all state permanent classified employees who are laid off, such recall rights to be based on seniority and fitness; establishing eligible lists for preference; limiting eligibility for appointment to twelve months; and grounds for rejection of candidates.

*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 division.**

1 The board shall have the authority to promulgate,  
2 amend or repeal rules, in accordance with chapter  
3 twenty-nine-a of this code, to implement the provi-  
4 sions 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  
9 upon similarity of duties performed and responsibili-  
10 ties assumed, so that the same qualifications may  
11 reasonably be required for and the same schedule of  
12 pay may be equitably applied to all positions in the  
13 same class. The position classification plan for  
14 classified-exempt service shall become effective not  
15 later than the first day of July, one thousand nine  
16 hundred seventy-nine. Except for persons employed  
17 by the governing boards of higher education, all  
18 persons receiving compensation in the form of a wage  
19 or salary, funded either in part or in whole by the  
20 state, shall be included in either the position classifi-  
21 cation plan for classified service or classified-exempt  
22 service. After each such classification plan has been  
23 approved by the board, the director shall allocate the  
24 position of every employee in the classified service to  
25 one of the classes in the classified plan and the position  
26 of every employee in the classified-exempt service to  
27 one of the positions in the classified-exempt plan. Any  
28 employee affected by the allocation of a position to a  
29 class shall, after filing with the director of personnel a  
30 written request for reconsideration thereof in such  
31 manner and form as the director may prescribe, be  
32 given a reasonable opportunity to be heard thereon by  
33 the director. The interested appointing authority shall  
34 be given like opportunity to be heard.

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

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

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

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

80 (5) For layoffs by classification for reason of lack of  
81 funds or work, or abolition of a position, or material  
82 changes in duties or organization, or any loss of  
83 position because of the provisions of this subdivision  
84 and for recall of employees so laid off, consideration  
85 shall be given to an employee's seniority as measured  
86 by permanent employment in the classified service or  
87 a state agency. In the event that the agency wishes to

88 lay off a more senior employee, the agency must  
89 demonstrate that the senior employee cannot perform  
90 any other job duties held by less senior employees  
91 within that agency in the job class or any other  
92 equivalent or lower job class for which the senior  
93 employee is qualified: *Provided*, That if an employee  
94 refuses to accept a position in a lower job class, such  
95 employee shall retain all rights of recall as hereinafter  
96 provided.

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

115 Notwithstanding any other provision of the code to  
116 the contrary, except for the provisions of section  
117 seven, article two, chapter five-b of this code, when  
118 filling vacancies at state agencies the directors of state  
119 agencies shall, for a period of twelve months after the  
120 lay off of a permanent classified employee in another  
121 agency, give preference to qualified permanent classi-  
122 fied employees based on seniority and fitness over all  
123 but existing employees of the agency or its facilities:  
124 *Provided*, That employment of these persons who are  
125 qualified and who were permanently employed imme-  
126 diately prior to their layoff shall not supersede the  
127 recall rights of employees who have been laid off in  
128 such agency or facility.

129 (7) For the establishment of eligible lists for appoint-  
130 ment and promotion within the classified service,  
131 upon which lists shall be placed the names of success-  
132 ful candidates in the order of their relative excellence  
133 in the respective examinations. Eligibility for appoint-  
134 ment from any such list shall continue not longer than  
135 three years. An appointing authority shall make his  
136 selection from the top ten names on the appropriate  
137 lists of eligible, or may choose any person scoring at or  
138 above the ninetieth percentile on the examination.

139 For the establishment of eligible lists for preference  
140 as provided in subsection (6) of this section, a list shall  
141 be provided according to seniority. An appointed  
142 authority shall make the selection of the most senior  
143 qualified person: *Provided*, That eligibility for appoint-  
144 ment from any such list shall continue not longer than  
145 one year and shall cease immediately upon appoint-  
146 ment to a classified position.

147 (8) For the rejection of candidates or eligibles within  
148 the classified service who fail to comply with reason-  
149 able requirements in regard to such factors as age,  
150 physical condition, character, training and experience  
151 who are addicted to alcohol or narcotics or who have  
152 attempted any deception or fraud in connection with  
153 an examination.

154 (9) For a period of probation not to exceed one year  
155 before appointment or promotion may be made com-  
156 plete within the classified service.

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

165 (11) For keeping records of performance of all  
166 employees in the classified service, which service  
167 records may be considered in determining salary  
168 increases and decreases provided in the pay plan; as a

169 factor in promotion tests; as a factor in determining  
170 the order of layoffs because of lack of funds or work  
171 and in reinstatement; and as a factor in demotions,  
172 discharges and transfers.

173 (12) For discharge or reduction in rank or grade only  
174 for cause of employees in the classified service.  
175 Discharge or reduction of these employees shall take  
176 place only after the person to be discharged or reduced  
177 has been presented with the reasons for such dis-  
178 charge or reduction stated in writing, and has been  
179 allowed a reasonable time to reply thereto in writing,  
180 or upon request to appear personally and reply to the  
181 appointing authority or his deputy. The statement of  
182 reasons and the reply shall be filed as a public record  
183 with the director. Notwithstanding the foregoing  
184 provisions of this subdivision, no permanent employee  
185 shall be discharged from the classified service for  
186 absenteeism upon using all entitlement to annual  
187 leave and sick leave when such use has been due to  
188 illness or injury as verified by a physician's certifica-  
189 tion or for other extenuating circumstances beyond  
190 the employee's control unless his disability is of such  
191 a nature as to permanently incapacitate him from the  
192 performance of the duties of his position. Upon  
193 exhaustion of annual leave and sick leave credits for  
194 the reasons specified herein and with certification by  
195 a physician that the employee is unable to perform his  
196 duties, a permanent employee shall be granted a leave  
197 of absence without pay for a period not to exceed six  
198 months if such employee is not permanently unable to  
199 satisfactorily perform the duties of his position.

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

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

207 The provisions of this section are subject to any  
208 modifications contained in chapter five-f of this code.

209 The board may include in the rules provided for in  
210 this article such provisions as are necessary to conform  
211 to regulations and standards of any federal agency  
212 governing the receipt and use of federal grants-in-aid  
213 by any state agency, anything in this article to the  
214 contrary notwithstanding. The board and the director  
215 shall see that rules and practices meeting such stand-  
216 ards are in effect continuously after the effective date  
217 of this article.



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

*Lomer Luck*  
.....  
Chairman Senate Committee

.....*Ernest C. Moore*.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1992.

*Samuel B. Adams*  
.....  
Clerk of the Senate

.....*Donald D. Kopp*.....  
Clerk of the House of Delegates

.....*Paul Brundette*.....  
President of the Senate

.....*Robert R. ...*.....  
Speaker House of Delegates

The within *is approved* this the *1st* .....  
day of *April* ....., 1992.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/92  
Time 5:00 pm

