WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 602

(By Senator Spears, et al)

PASSED March 2, 1992
In Effect July 1, 1992
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, amend or repeal rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article:
(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 governing boards of higher education, 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 board, 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 board. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the board. 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 eligible 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: Provided, That if an employee
refuses to accept a position in a lower job class, such
employee shall retain all rights of recall as hereinafter
provided.

(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 responsi-
bility of the employee to notify the agency of any
change in his address.

Notwithstanding any other provision of the code to
the contrary, except for the provisions of section
seven, article two, chapter five-b of this code, when
filling vacancies at state agencies the directors of state
agencies shall, for a period of twelve months after the
lay off of a permanent classified employee in another
agency, give preference to qualified permanent classi-
fied employees based on seniority and fitness over all
but existing employees of the agency or its facilities:
Provided, That employment of these persons who are
qualified and who were permanently employed imme-
diately prior to their layoff shall not supersede the
recall rights of employees who have been laid off in
such agency or facility.
(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 ten names on the appropriate lists of eligible, or may choose any person scoring at or above the ninetieth percentile on the examination.

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

(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.

(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 dis-
charge 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 certifica-
tion 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 regula-
tions, not inconsistent with this article, as may be
proper and necessary for its enforcement.

(14) The board 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 provisions of this section are subject to any
modifications contained in chapter five-f of this code.
The board 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 board and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Buck
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1992.

Marshall Billings
Clerk of the Senate

Donald D. Kopp
Clerk of the House of Delegates

Walt Goodt
President of the Senate

Ron Fawell
Speaker House of Delegates

The within is approved this the 15th day of April, 1992.

Governor

Yaston Caperton