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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

— ● —

## ENROLLED

*Com. Sub. For*  
**HOUSE BILL No. 2585**

(By Delegates *Staton, Seacrist, Farris,*  
*Manuel and Hunt*)

— ● —

Passed *March 19,* 1995

In Effect *Ninety Days From* Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2585**

(BY DELEGATES STATON, SEACRIST, FARRIS, MANUEL AND HUNT)

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[Passed March 10, 1995; 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 consideration of public employees' levels of seniority as a factor when awarding benefits or withdrawing benefits under the classified service.

*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 COMMISSION.**

**§29-6-10. Rules of division.**

1       The board shall have the authority to promulgate,  
2 amend or repeal rules, according to chapter twenty-nine-a  
3 of this code, to implement the provisions of this article:

4       (1) For the preparation, maintenance and revision of a  
5 position classification plan for all positions in the classi-  
6 fied service and a position classification plan for all posi-  
7 tions in the classified-exempt service, based upon similari-

8 ty of duties performed and responsibilities assumed, so  
9 that the same qualifications may reasonably be required  
10 for and the same schedule of pay may be equitably ap-  
11 plied to all positions in the same class. Except for persons  
12 employed by the governing boards of higher education,  
13 all persons receiving compensation as a wage or salary,  
14 funded either in part or in whole by the state, are included  
15 in either the position classification plan for classified ser-  
16 vice or classified-exempt service. After each such classifi-  
17 cation plan has been approved by the board, the director  
18 shall allocate the position of every employee in the classi-  
19 fied service to one of the classes in the classified plan and  
20 the position of every employee in the classified-exempt  
21 service to one of the positions in the classified-exempt  
22 plan. Any employee affected by the allocation of a posi-  
23 tion to a class shall, after filing with the director of person-  
24 nel a written request for reconsideration thereof in such  
25 manner and form as the director may prescribe, be given a  
26 reasonable opportunity to be heard thereon by the direc-  
27 tor. The interested appointing authority shall be given  
28 like opportunity to be heard.

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

41 (3) For open competitive examinations to test the  
42 relative fitness of applicants for the respective positions in  
43 the classified service. Such examinations need not be held  
44 until after the rules have been adopted, the service classi-  
45 fied and a pay plan established, but shall be held not later  
46 than one year after this article takes effect. Such examina-  
47 tions shall be announced publicly at least fifteen days in  
48 advance of the date fixed for the filing of applications

49 therefor, and may be advertised through the press, radio  
50 and other media. The director may, however, in his or her  
51 discretion, continue to receive applications and examine  
52 candidates long enough to assure a sufficient number of  
53 eligibles to meet the needs of the service and may add the  
54 names of successful candidates to existing eligible lists in  
55 accordance with their respective ratings.

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

61 (4) For promotions within the classified service which  
62 shall give appropriate consideration to the applicant's  
63 qualifications, record of performance, seniority and his or  
64 her score on a written examination, when such examina-  
65 tion is practicable. An advancement in rank or grade or  
66 an increase in salary beyond the maximum fixed for the  
67 class shall constitute a promotion. When any benefit such  
68 as a promotion, wage increase or transfer is to be awarded,  
69 or when a withdrawal of a benefit such as a reduction in  
70 pay, a layoff or job termination is to be made, and a  
71 choice is required between two or more employees in the  
72 classified service as to who will receive the benefit or have  
73 the benefit withdrawn, and if some or all of the eligible  
74 employees have substantially equal or similar qualifica-  
75 tions, consideration shall be given to the level of seniority  
76 of each of the respective employees as a factor in deter-  
77 mining which of the employees will receive the benefit or  
78 have the benefit withdrawn, as the case may be.

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

89 senior employees within that agency in the job class or  
90 any other equivalent or lower job class for which the se-  
91 nior employee is qualified: *Provided*, That if an employ-  
92 ee refuses to accept a position in a lower job class, such  
93 employee shall retain all rights of recall as hereinafter  
94 provided.

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

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

125 (7) For the establishment of eligible lists for appoint-  
126 ment and promotion within the classified service, upon  
127 which lists shall be placed the names of successful candi-  
128 dates in the order of their relative excellence in the respec-

129 tive examinations. Eligibility for appointment from any  
 130 such list shall continue not longer than three years. An  
 131 appointing authority shall make his selection from the top  
 132 ten names on the appropriate lists of eligibles, or may  
 133 choose any person scoring at or above the ninetieth per-  
 134 centile on the examination.

135 For the establishment of eligible lists for preference as  
 136 provided in subdivision (6) of this section, a list shall be  
 137 provided according to seniority. An appointed authority  
 138 shall make the selection of the most senior qualified per-  
 139 son: *Provided*, That eligibility for appointment from any  
 140 such list shall continue not longer than one year and shall  
 141 cease immediately upon appointment to a classified posi-  
 142 tion.

143 (8) For the rejection of candidates or eligibles within  
 144 the classified service who fail to comply with reasonable  
 145 requirements in regard to such factors as age, physical  
 146 condition, character, training and experience who are  
 147 addicted to alcohol or narcotics or who have attempted  
 148 any deception or fraud in connection with an examina-  
 149 tion.

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

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

161 (11) For keeping records of performance of all em-  
 162 ployees in the classified service, which service records may  
 163 be considered in determining salary increases and decreas-  
 164 es provided in the pay plan; as a factor in promotion tests;  
 165 as a factor in determining the order of layoffs because of  
 166 lack of funds or work and in reinstatement; and as a factor  
 167 in demotions, discharges and transfers.

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

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

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

200       The provisions of this section are subject to any modi-  
201       fications contained in chapter five-f of this code. The  
202       board may include in the rules provided for in this article  
203       such provisions as are necessary to conform to regulations  
204       and standards of any federal agency governing the receipt  
205       and use of federal grants-in-aid by any state agency, any-  
206       thing in this article to the contrary notwithstanding. The

207 board and the director shall see that rules and practices  
208 meeting such standards are in effect continuously after the  
209 effective date of this article.

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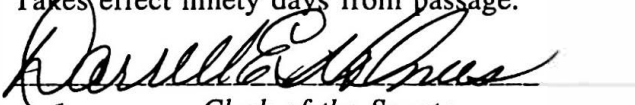
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

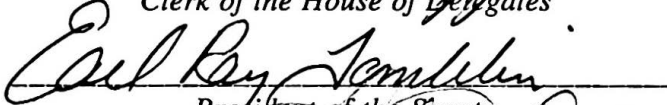
  
Chairman House Committee


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 \_\_\_\_\_  
day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/24/95

Time 3:37pm

A handwritten signature, possibly reading "S", is written below the time field.