WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

Com. Sub. For

HOUSE BILL No. 2585

(By Delegate S. Staton, S. Swaret, J. Ferris,
Manuel and K. Hunt)

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Passed March 10, 1995

In Effect Ninety Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2585
(BY DELEGATES STATON, SEACRIST, FARRIS, MANUEL AND HUNT)

(Passed March 10, 1995; in effect ninety days from passage.)

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 classifi-
6 fied service and a position classification plan for all posi-
7 tions in the classified-exempt service, based upon similari-
ty 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 ap-
plied to all positions in the same class. Except for persons
employed by the governing boards of higher education,
all persons receiving compensation as a wage or salary,
funded either in part or in whole by the state, are included
in either the position classification plan for classified ser-
vice or classified-exempt service. After each such classifi-
cation plan has been approved by the board, the director
shall allocate the position of every employee in the classi-
fied 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 posi-
tion to a class shall, after filing with the director of person-
nel 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 direc-
tor. 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 submis-
sion 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 es-
tablished 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 classi-
fied and a pay plan established, but shall be held not later
than one year after this article takes effect. Such examina-
tions 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 or her
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, seniority and his or
her score on a written examination, when such examina-
tion is practicable. An advancement in rank or grade or
an increase in salary beyond the maximum fixed for the
class shall constitute a promotion. When any benefit such
as a promotion, wage increase or transfer is to be awarded,
or when a withdrawal of a benefit such as a reduction in
pay, a layoff or job termination is to be made, and a
choice is required between two or more employees in the
classified service as to who will receive the benefit or have
the benefit withdrawn, and if some or all of the eligible
employees have substantially equal or similar qualifica-
tions, consideration shall be given to the level of seniority
of each of the respective employees as a factor in deter-
mining which of the employees will receive the benefit or
have the benefit withdrawn, as the case may be.

(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 em-
ployment in the classified service or a state agency. In the
event that the agency wishes to lay off a more senior em-
ployee, the agency must demonstrate that the senior em-
ployee cannot perform any other job duties held by less
(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 or her place on the recall list for the same period of time as his or her seniority on the date of his or her 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 or her 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 or her 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 layoff of a permanent classified employee in another agency, give preference to qualified permanent classified 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 immediately 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 respec-
tive 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 eligibles, 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 subdivision (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 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 or her 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 or her disability is of such a nature as to permanently incapacitate him or her from the performance of the duties of his or her 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 or her 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 or her 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 board shall review and approve by rules 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.

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.