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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 2262

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed March 11, 1999

In Effect Ninety Days from Passage

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FOR

**H. B. 2262**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed March 11, 1999; 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 certain employee rights; qualifications for certain promotions; and payment of severance pay.

*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, amend or
- 2 repeal rules, according to chapter twenty-nine-a of this code, to
- 3 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 classified  
6 service and a position classification plan for all positions in the  
7 classified-exempt service, based upon similarity of duties  
8 performed and responsibilities assumed, so that the same  
9 qualifications may reasonably be required for and the same  
10 schedule of pay may be equitably applied to all positions in the  
11 same class. Except for persons employed by the governing  
12 boards of higher education, all persons receiving compensation  
13 as a wage or salary, funded either in part or in whole by the  
14 state, are included in either the position classification plan for  
15 classified service or classified-exempt service. After each such  
16 classification plan has been approved by the board, the director  
17 shall allocate the position of every employee in the classified  
18 service to one of the classes in the classified plan and the  
19 position of every employee in the classified-exempt service to  
20 one of the positions in the classified-exempt plan. Any em-  
21 ployee affected by the allocation of a position to a class shall,  
22 after filing with the director of personnel a written request for  
23 reconsideration thereof in such manner and form as the director  
24 may prescribe, be given a reasonable opportunity to be heard  
25 thereon by the director. The interested appointing authority  
26 shall be given like opportunity to be heard.

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

38 (3) For open competitive examinations to test the relative  
39 fitness of applicants for the respective positions in the classified  
40 service. Such examinations need not be held until after the rules  
41 have been adopted, the service classified and a pay plan

42 established, but shall be held not later than one year after this  
43 article takes effect. Such examinations shall be announced  
44 publicly at least fifteen days in advance of the date fixed for the  
45 filing of applications therefor, and may be advertised through  
46 the press, radio and other media. The director may, however, in  
47 his or her discretion, continue to receive applications and  
48 examine candidates long enough to assure a sufficient number  
49 of eligibles to meet the needs of the service and may add the  
50 names of successful candidates to existing eligible lists in  
51 accordance with their respective ratings.

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

57 (4) For promotions within the classified service which shall  
58 give appropriate consideration to the applicant's qualifications,  
59 record of performance, seniority and his or her score on a  
60 written examination, when such examination is practicable. An  
61 advancement in rank or grade or an increase in salary beyond  
62 the maximum fixed for the class shall constitute a promotion.  
63 When any benefit such as a promotion, wage increase or  
64 transfer is to be awarded, or when a withdrawal of a benefit  
65 such as a reduction in pay, a layoff or job termination is to be  
66 made, and a choice is required between two or more employees  
67 in the classified service as to who will receive the benefit or  
68 have the benefit withdrawn, and if some or all of the eligible  
69 employees have substantially equal or similar qualifications,  
70 consideration shall be given to the level of seniority of each of  
71 the respective employees as a factor in determining which of  
72 the employees will receive the benefit or have the benefit  
73 withdrawn, as the case may be. When an employee classified in  
74 a secretarial or clerical position has, irrespective of job classifi-  
75 cation, actual job experience related to the qualifications for a  
76 managerial or supervisory position, the division shall consider  
77 the experience as qualifying experience for the position. The  
78 division in its classification plan may, for designated classifica-  
79 tions, permit substitution of qualifying experience for specific

80 educational or training requirements at a rate determined by the  
81 division.

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

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

117 employee in another agency, give preference to qualified  
118 permanent classified employees based on seniority and fitness  
119 over all but existing employees of the agency or its facilities:  
120 *Provided*, That employment of these persons who are qualified  
121 and who were permanently employed immediately prior to their  
122 layoff shall not supersede the recall rights of employees who  
123 have been laid off in such agency or facility.

124 (7) For the establishment of eligible lists for appointment  
125 and promotion within the classified service, upon which lists  
126 shall be placed the names of successful candidates in the order  
127 of their relative excellence in the respective examinations.  
128 Eligibility for appointment from any such list shall continue not  
129 longer than three years. An appointing authority shall make his  
130 selection from the top ten names on the appropriate lists of  
131 eligibles, or may choose any person scoring at or above the  
132 ninetieth percentile on the examination.

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

140 (8) For the rejection of candidates or eligibles within the  
141 classified service who fail to comply with reasonable require-  
142 ments in regard to such factors as age, physical condition,  
143 character, training and experience who are addicted to alcohol  
144 or narcotics or who have attempted any deception or fraud in  
145 connection with an examination.

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

149 (10) For provisional employment without competitive  
150 examination within the classified service when there is no  
151 appropriate eligible list available. No such provisional employ-  
152 ment may continue longer than six months, nor shall successive

153 provisional appointments be allowed, except during the first  
154 year after the effective date of this article, in order to avoid  
155 stoppage of orderly conduct of the business of the state.

156 (11) For keeping records of performance of all employees  
157 in the classified service, which service records may be consid-  
158 ered in determining salary increases and decreases provided in  
159 the pay plan; as a factor in promotion tests; as a factor in  
160 determining the order of layoffs because of lack of funds or  
161 work and in reinstatement; and as a factor in demotions,  
162 discharges and transfers.

163 (12) For discharge or reduction in rank or grade only for  
164 cause of employees in the classified service. Discharge or  
165 reduction of these employees shall take place only after the  
166 person to be discharged or reduced has been presented with the  
167 reasons for such discharge or reduction stated in writing, and  
168 has been allowed a reasonable time to reply thereto in writing,  
169 or upon request to appear personally and reply to the appointing  
170 authority or his or her deputy: *Provided*, That upon an involun-  
171 tary discharge for cause, the employer may require immediate  
172 separation from the workplace, or the employee may elect  
173 immediate separation. If separation is required by the employer  
174 in lieu of any advance notice of discharge, or if immediate  
175 separation is elected by an employee who receives notice of an  
176 involuntary discharge for cause, the employee is entitled to  
177 receive severance pay attributable to time the employee  
178 otherwise would have worked, up to a maximum of fifteen  
179 calendar days following separation. Receipt of severance pay  
180 does not affect any other right to which the employee is entitled  
181 with respect to the discharge. The statement of reasons and the  
182 reply shall be filed as a public record with the director. Not-  
183 withstanding the foregoing provisions of this subdivision, no  
184 permanent employee shall be discharged from the classified  
185 service for absenteeism upon using all entitlement to annual  
186 leave and sick leave when such use has been due to illness or  
187 injury as verified by a physician's certification or for other  
188 extenuating circumstances beyond the employee's control  
189 unless his or her disability is of such a nature as to permanently  
190 incapacitate him or her from the performance of the duties of

191 his or her position. Upon exhaustion of annual leave and sick  
192 leave credits for the reasons specified herein and with certifica-  
193 tion by a physician that the employee is unable to perform his  
194 or her duties, a permanent employee shall be granted a leave of  
195 absence without pay for a period not to exceed six months if  
196 such employee is not permanently unable to satisfactorily  
197 perform the duties of his or her position.

198 (13) For such other rules and administrative regulations, not  
199 inconsistent with this article, as may be proper and necessary  
200 for its enforcement.

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

204 The provisions of this section are subject to any modifica-  
205 tions contained in chapter five-f of this code. The board may  
206 include in the rules provided for in this article such provisions  
207 as are necessary to conform to regulations and standards of any  
208 federal agency governing the receipt and use of federal  
209 grants-in-aid by any state agency, anything in this article to the  
210 contrary notwithstanding. The board and the director shall see  
211 that rules and practices meeting such standards are in effect  
212 continuously after the effective date of this article.



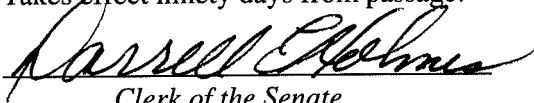
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

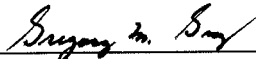
  
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Chairman Senate Committee


  
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Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

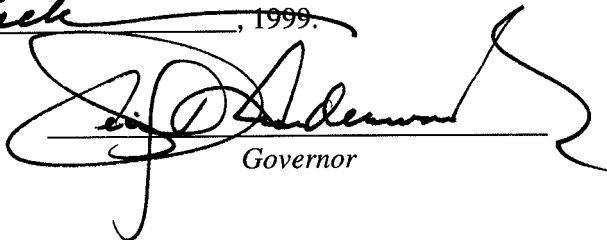
  
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Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within approved this the 3/5  
day of March, 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/99

Time 3:51 pm