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
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 repeal rules, according to 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. 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 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 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 examination 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 qualifications,
consideration shall be given to the level of seniority of each of
the respective employees as a factor in determining which of
the employees will receive the benefit or have the benefit
withdrawn, as the case may be. When an employee classified in
a secretarial or clerical position has, irrespective of job classifi-
cation, actual job experience related to the qualifications for a
managerial or supervisory position, the division shall consider
the experience as qualifying experience for the position. The
division in its classification plan may, for designated classifica-
tions, permit substitution of qualifying experience for specific
(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 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 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 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

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
determining the order of layoffs because of lack of funds or
work and in reinstatement; and as a factor in demotions,
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
reasons for such discharge or reduction stated in writing, and
167 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: Provided, That upon an involun-
tary discharge for cause, the employer may require immediate
separation from the workplace, or the employee may elect
immediate separation. If separation is required by the employer
in lieu of any advance notice of discharge, or if immediate
separation is elected by an employee who receives notice of an
involuntary discharge for cause, the employee is entitled to
receive severance pay attributable to time the employee
otherwise would have worked, up to a maximum of fifteen
calendar days following separation. Receipt of severance pay
does not affect any other right to which the employee is entitled.
with respect to the discharge. The statement of reasons and the
reply shall be filed as a public record with the director. Not-
withstanding 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.
Enr. Com. Sub. for H. B. 2262] 8

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

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ approval this the _______ day of _______, 1999.

Governor