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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



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Con. Sub. for Con. Sub. for

SENATE BILL NO. 161

(By Senators Jackson and Tomblin, Mr. President)



PASSED MARCH 12, 1999

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 161

(SENATORS JACKSON AND TOMBLIN, *original sponsors*)

[Passed March 12, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article seven, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deleting the limitation of one year relative to the application of certain seniority rights of employees involuntarily transferred to nonclassified positions.

Be it enacted by the Legislature of West Virginia:

That section one, article seven, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

1 (a) Definitions for terms used in this section are in
2 accordance with those provided in section two, article nine
3 of this chapter except that the provisions of this section
4 shall apply only to classified employees whose employ-
5 ment, if continued, accumulates to a minimum total of one
6 thousand forty hours during a calendar year and extends
7 over at least nine months of a calendar year: *Provided,*
8 That this section also applies to any classified employee
9 who is involuntarily transferred to a position in
10 nonclassified status for which he or she did not apply:
11 *Provided, however,* That any classified employee involun-
12 tarily transferred to a position in nonclassified status may
13 only exercise the rights set out in this section for positions
14 equivalent to or lower than the last job class the employee
15 held.

16 (b) All decisions by the appropriate governing board or
17 their agents at state institutions of higher education
18 concerning reductions in work force of full-time classified
19 personnel, whether by temporary furlough or permanent
20 termination, shall be made in accordance with this section.
21 For layoffs by classification for reason of lack of funds or
22 work, or abolition of position or material changes in duties
23 or organization and for recall of employees laid off,
24 consideration shall be given to an employee's seniority as
25 measured by permanent employment in the service of the
26 state system of higher education. In the event that the
27 institution wishes to lay off a more senior employee, the
28 institution shall demonstrate that the senior employee
29 cannot perform any other job duties held by less senior
30 employees of that institution in the same job class or any
31 other equivalent or lower job class for which the senior
32 employee is qualified: *Provided,* That if an employee
33 refuses to accept a position in a lower job class, the

34 employee shall retain all rights of recall provided in this
35 section. If two or more employees accumulate identical
36 seniority, the priority shall be determined by a random
37 selection system established by the employees and ap-
38 proved by the institution.

39 (c) Any employee laid off during a furlough or reduction
40 in work force shall be placed upon a preferred recall list
41 and shall be recalled to employment by the institution on
42 the basis of seniority. An employee's listing with an
43 institution shall remain active for a period of one calendar
44 year from the date of termination or furlough or from the
45 date of the most recent renewal. If an employee fails to
46 renew the listing with the institution, the employee's name
47 may be removed from the list. An employee placed upon
48 the preferred list shall be recalled to any position opening
49 by the institution within the classifications in which the
50 employee had previously been employed or to any lateral
51 position for which the employee is qualified. An employee
52 on the preferred recall list shall not forfeit the right to
53 recall by the institution if compelling reasons require the
54 employee to refuse an offer of reemployment by the
55 institution.

56 The institution shall notify all employees maintaining
57 active listings on the preferred recall list of all position
58 openings that from time to time exist. The notice shall be
59 sent by certified mail to the last known address of the
60 employee. It is the duty of each employee listed to notify
61 the institution of any change in address and to timely
62 renew the listing with the institution. No position open-
63 ings shall be filled by the institution, whether temporary
64 or permanent, until all employees on the preferred recall
65 list have been properly notified of existing vacancies and
66 have been given an opportunity to accept reemployment.

67 (d) A nonexempt classified employee, including a
68 nonexempt employee who has not accumulated a mini-
69 mum total of one thousand forty hours during the calendar
70 year or whose contract does not extend over at least nine
71 months of a calendar year, who meets the minimum
72 qualifications for a job opening at the institution where
73 the employee is currently employed, whether the job is a

74 lateral transfer or a promotion, and applies for the job
75 shall be transferred or promoted before a new person is
76 hired unless the hiring is affected by mandates in affirma-
77 tive action plans or the requirements of Public Law
78 101-336, The Americans With Disabilities Act. If more
79 than one qualified, nonexempt classified employee applies,
80 the best-qualified nonexempt classified employee shall be
81 awarded the position. In instances where the classified
82 employees are equally qualified, the nonexempt classified
83 employee with the greatest amount of continuous seniority
84 at that state institution of higher education shall be
85 awarded the position. A nonexempt classified employee is
86 one to whom the provisions of the federal fair labor
87 standards act, as amended, apply.

88 (e) In addition to any other information required, any
89 application for personnel governed by the provisions of
90 this section shall include the applicant's social security
91 number.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within..... *[Signature]* this the 3/5.....
Day of March....., 1998
[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/99

Time 1:42 pm