WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

ENROLLED

SENATE BILL NO. 161

(By Senators Jackson and Tomblin, Mr. President)

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.

(a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year: Provided, that this section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply: Provided, however, that any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

(b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same 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, the
employee shall retain all rights of recall provided in this section. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

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

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

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a calendar year, who meets the minimum qualifications for a job opening at the institution where the employee is currently employed, whether the job is a
lateral transfer or a promotion, and applies for the job shall be transferred or promoted before a new person is hired unless the hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, The Americans With Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee shall be awarded the position. In instances where the classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position. A nonexempt classified employee is one to whom the provisions of the federal fair labor standards act, as amended, apply.

(e) In addition to any other information required, any application for personnel governed by the provisions of this section shall include the applicant’s social security number.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... this the 31st...
Day of... 1998

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/25/44.
Time: 1:42 P.M.