

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3041**

BY DELEGATE WALTERS

[Introduced March 14, 2017; Referred  
to the Committee on Government Organization then  
the Judiciary.]

1 A BILL to amend and reenact §29-6-10 of the Code of West Virginia, 1931, as amended, relating  
2 to the classification plans for employees in the classified and classified-exempt service;  
3 exempting classification and pay grade from the Public Employees Grievance Procedure;  
4 and providing for reconsideration of allocations of positions to classifications.

*Be it enacted by the Legislature of West Virginia:*

1 That §29-6-10 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

## **ARTICLE 6. CIVIL SERVICE SYSTEM.**

### **§29-6-10. Rules of division.**

1 The board shall have the authority to promulgate, amend or repeal rules, according to  
2 chapter twenty-nine-a of this code, to implement the provisions of this article:

3 (1) For the preparation, maintenance and revision of a position classification plan for all  
4 positions in the classified service and a position classification plan for all positions in the classified-  
5 exempt service, based upon similarity of duties performed and responsibilities assumed, so that  
6 the same qualifications may reasonably be required for and the same schedule of pay may be  
7 equitably applied to all positions in the same class. Except for persons employed by the governing  
8 boards of higher education, all persons receiving compensation as a wage or salary, funded either  
9 in part or in whole by the state, are included in either the position classification plan for classified  
10 service or classified-exempt service. After each such classification plan has been approved by  
11 the board, the director shall allocate the position of every employee in the classified service to  
12 one of the classes in the classified plan and the position of every employee in the classified-  
13 exempt service to one of the positions in the classified-exempt plan. Any employee affected by  
14 the allocation of a position to a class shall, after filing with the director of personnel a written  
15 request for reconsideration thereof in such manner and form as the director may prescribe, be  
16 given a reasonable opportunity to be heard thereon by the director. The interested appointing  
17 authority shall be given like opportunity to be heard. Notwithstanding any other provision of this

code to the contrary, classification and pay grade are not subject to the provisions of article two, chapter six-c of this code. Further, it is the specific intent of the Legislature that no private cause of action, either express or implied, is created by or otherwise arises from the enactment, provisions or implementation of this section.

(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 or her 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 or she 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

44 increase in salary beyond the maximum fixed for the class shall constitute a promotion. When any  
45 benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of  
46 a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is  
47 required between two or more employees in the classified service as to who will receive the benefit  
48 or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal  
49 or similar qualifications, consideration shall be given to the level of seniority of each of the  
50 respective employees as a factor in determining which of the employees will receive the benefit  
51 or have the benefit withdrawn, as the case may be. When an employee classified in a secretarial  
52 or clerical position has, irrespective of job classification, actual job experience related to the  
53 qualifications for a managerial or supervisory position, the division shall consider the experience  
54 as qualifying experience for the position. The division in its classification plan may, for designated  
55 classifications, permit substitution of qualifying experience for specific educational or training  
56 requirements at a rate determined by the division.

57 (5) For layoffs by classification for reason of lack of funds or work, or abolition of a position,  
58 or material changes in duties or organization, or any loss of position because of the provisions of  
59 this subdivision and for recall of employees so laid off, consideration shall be given to an  
60 employee's seniority as measured by permanent employment in the classified service or a state  
61 agency. In the event that the agency wishes to lay off a more senior employee, the agency must  
62 demonstrate that the senior employee cannot perform any other job duties held by less senior  
63 employees within that agency in the job class or any other equivalent or lower job class for which  
64 the senior employee is qualified: *Provided*, That if an employee refuses to accept a position in a  
65 lower job class, such employee shall retain all rights of recall as hereinafter provided.

66 (6) For recall of employees, recall shall be by reverse order of layoff to any job class that  
67 the employee has previously held or a lower class in the series within the agency as that job class  
68 becomes vacant. An employee will retain his or her place on the recall list for the same period of  
69 time as his or her seniority on the date of his or her layoff or for a period of two years, whichever

70 is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job  
71 class in the series until all eligible employees on layoff are given the opportunity to refuse that job  
72 class. An employee shall be recalled onto jobs within the county wherein his or her last place of  
73 employment is located or within a county contiguous thereto. Any laid-off employee who is eligible  
74 for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility  
75 of the employee to notify the agency of any change in his or her address.

76 Notwithstanding any other provision of the code to the contrary, except for the provisions  
77 of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies  
78 the directors of state agencies shall, for a period of twelve months after the layoff of a permanent  
79 classified employee in another agency, give preference to qualified permanent classified  
80 employees based on seniority and fitness over all but existing employees of the agency or its  
81 facilities: *Provided*, That employment of these persons who are qualified and who were  
82 permanently employed immediately prior to their layoff shall not supersede the recall rights of  
83 employees who have been laid off in such agency or facility.

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

90 For the establishment of eligible lists for preference as provided in subdivision (6) of this  
91 section, a list shall be provided according to seniority. An appointed authority shall make the  
92 selection of the most senior qualified person: *Provided*, That eligibility for appointment from any  
93 such list shall continue not longer than one year and shall cease immediately upon appointment  
94 to a classified position.

95 (8) For the rejection of candidates or eligibles within the classified service who fail to

96 comply with reasonable requirements in regard to such factors as age, physical condition,  
97 character, training and experience who are addicted to alcohol or narcotics or who have attempted  
98 any deception or fraud in connection with an examination.

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

101 (10) For provisional employment without competitive examination within the classified  
102 service when there is no appropriate eligible list available. No such provisional employment may  
103 continue longer than six months, nor shall successive provisional appointments be allowed,  
104 except during the first year after the effective date of this article, in order to avoid stoppage of  
105 orderly conduct of the business of the state.

106 (11) For keeping records of performance of all employees in the classified service, which  
107 service records may be considered in determining salary increases and decreases provided in  
108 the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because  
109 of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and  
110 transfers.

111 (12) For discharge or reduction in rank or grade only for cause of employees in the  
112 classified service. Discharge or reduction of these employees shall take place only after the  
113 person to be discharged or reduced has been presented with the reasons for such discharge or  
114 reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or  
115 upon request to appear personally and reply to the appointing authority or his or her deputy:  
116 *Provided, That upon an involuntary discharge for cause, the employer may require immediate*  
117 *separation from the workplace, or the employee may elect immediate separation. If separation is*  
118 *required by the employer in lieu of any advance notice of discharge, or if immediate separation is*  
119 *elected by an employee who receives notice of an involuntary discharge for cause, the employee*  
120 *is entitled to receive severance pay attributable to time the employee otherwise would have*  
121 *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. 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.

NOTE: The purpose of this bill is to exempt position classification for classified and classified-exempt employees from the Public Employees Grievance Procedure and private cause of action.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.