

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3083

**FISCAL
NOTE**

BY DELEGATE WALTERS (SOLE SPONSOR-
RESIGNED 3/7/18)

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

1 A BILL to amend and reenact §29-6-10 of the Code of West Virginia, 1931, as amended, relating
 2 to eliminating annual and sick leave for state employees; replacing those two types of
 3 leave with personal leave; establishing a different amount of personal leave for employees
 4 hired after June 30, 2017; and decreasing the amount of personal leave time an employee
 5 may carry-forward.

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.

18 (2) For a pay plan for all employees in the classified service, after consultation with
19 appointing authorities and the state fiscal officers, and after a public hearing held by the board.
20 Such pay plan shall become effective only after it has been approved by the Governor after
21 submission to him or her by the board. Amendments to the pay plan may be made in the same
22 manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of
23 position in which he or she is employed. The principle of equal pay for equal work in the several
24 agencies of the state government shall be followed in the pay plan as established hereby.

25 (3) For open competitive examinations to test the relative fitness of applicants for the
26 respective positions in the classified service. Such examinations need not be held until after the
27 rules have been adopted, the service classified and a pay plan established, but shall be held not
28 later than one year after this article takes effect. Such examinations shall be announced publicly
29 at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be
30 advertised through the press, radio and other media. The director may, however, in his or her
31 discretion, continue to receive applications and examine candidates long enough to assure a
32 sufficient number of eligibles to meet the needs of the service and may add the names of
33 successful candidates to existing eligible lists in accordance with their respective ratings.

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

37 (4) For promotions within the classified service which shall give appropriate consideration
38 to the applicant's qualifications, record of performance, seniority and his or her score on a written
39 examination, when such examination is practicable. An advancement in rank or grade or an
40 increase in salary beyond the maximum fixed for the class shall constitute a promotion. When any
41 benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of
42 a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is

43 required between two or more employees in the classified service as to who will receive the benefit
44 or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal
45 or similar qualifications, consideration shall be given to the level of seniority of each of the
46 respective employees as a factor in determining which of the employees will receive the benefit
47 or have the benefit withdrawn, as the case may be. When an employee classified in a secretarial
48 or clerical position has, irrespective of job classification, actual job experience related to the
49 qualifications for a managerial or supervisory position, the division shall consider the experience
50 as qualifying experience for the position. The division in its classification plan may, for designated
51 classifications, permit substitution of qualifying experience for specific educational or training
52 requirements at a rate determined by the division.

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

62 (6) For recall of employees, recall shall be by reverse order of layoff to any job class that
63 the employee has previously held or a lower class in the series within the agency as that job class
64 becomes vacant. An employee will retain his or her place on the recall list for the same period of
65 time as his or her seniority on the date of his or her layoff or for a period of two years, whichever
66 is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job
67 class in the series until all eligible employees on layoff are given the opportunity to refuse that job
68 class. An employee shall be recalled onto jobs within the county wherein his or her last place of

69 employment is located or within a county contiguous thereto. Any laid-off employee who is eligible
70 for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility
71 of the employee to notify the agency of any change in his or her address.

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

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

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

91 (8) For the rejection of candidates or eligibles within the classified service who fail to
92 comply with reasonable requirements in regard to such factors as age, physical condition,
93 character, training and experience who are addicted to alcohol or narcotics or who have attempted
94 any deception or fraud in connection with an examination.

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

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

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

107 (12) For discharge or reduction in rank or grade only for cause of employees in the
108 classified service. Discharge or reduction of these employees shall take place only after the
109 person to be discharged or reduced has been presented with the reasons for such discharge or
110 reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or
111 upon request to appear personally and reply to the appointing authority or his or her deputy:
112 *Provided*, That upon an involuntary discharge for cause, the employer may require immediate
113 separation from the workplace, or the employee may elect immediate separation. If separation is
114 required by the employer in lieu of any advance notice of discharge, or if immediate separation is
115 elected by an employee who receives notice of an involuntary discharge for cause, the employee
116 is entitled to receive severance pay attributable to time the employee otherwise would have
117 worked, up to a maximum of fifteen calendar days following separation. Receipt of severance pay
118 does not affect any other right to which the employee is entitled with respect to the discharge.
119 The statement of reasons and the reply shall be filed as a public record with the director.
120 Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be

121 discharged from the classified service for absenteeism upon using all entitlement to annual leave
122 and sick leave when such use has been due to illness or injury as verified by a physician's
123 certification or for other extenuating circumstances beyond the employee's control unless his or
124 her disability is of such a nature as to permanently incapacitate him or her from the performance
125 of the duties of his or her position. Upon exhaustion of annual leave and sick leave credits for the
126 reasons specified herein and with certification by a physician that the employee is unable to
127 perform his or her duties, a permanent employee shall be granted a leave of absence without pay
128 for a period not to exceed six months if such employee is not permanently unable to satisfactorily
129 perform the duties of his or her position.

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

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

134 (15) Notwithstanding any provision in this section to the contrary, annual leave and sick
135 leave and their respective rates of accrual are eliminated and replaced with the following:

136 (A) All qualifying employees who are employed on or before June 30, 2017 are eligible to
137 receive personal leave as follows:

138 (i) Less than five years of qualifying service shall accrue two and three-fourths days per
139 month, with a carryforward rate equal to thirty days;

140 (ii) Five years but less than ten years of qualifying service shall accrue three days per
141 month, with a carry-forward rate equal to thirty days;

142 (iii) Ten years but less than fifteen years of qualifying service shall accrue three and one-
143 fourth days per month, with a carry-forward rate equal to thirty-five days; and

144 (iv) Fifteen or more years of qualifying service shall accrue three and one-half days per
145 month, with a carry-forward rate equal to forty days.

146 (B) All qualifying employees who are hired on and after July 1, 2017 are eligible to receive

147 personal leave as follows:

148 (i) Less than five years of qualifying service shall accrue one and three-eighths days per
149 month, with a carryforward rate equal to thirty days;

150 (ii) Five years but less than ten years of qualifying service shall accrue one and one-half
151 days per month, with a carry-forward rate equal to thirty days;

152 (iii) Ten years but less than fifteen years of qualifying service shall accrue one and five-
153 eighths days per month, with a carry-forward rate equal to thirty-five days; and

154 (iv) Fifteen or more years of qualifying service shall accrue one and three-fourths days per
155 month, with a carry-forward rate equal to forty days.

156 The provisions of this section are subject to any modifications contained in chapter five-f
157 of this code. The board may include in the rules provided for in this article such provisions as are
158 necessary to conform to regulations and standards of any federal agency governing the receipt
159 and use of federal grants-in-aid by any state agency, anything in this article to the contrary
160 notwithstanding. The board and the director shall see that rules and practices meeting such
161 standards are in effect continuously after the effective date of this article

NOTE: The purpose of this bill is to eliminate annual and sick leave for state employees. The bill replaces those two types of leave with personal leave. The bill establishes a different amount of personal leave for employees hired after June 30, 2017. The bill decreases the amount of personal leave time an employee may carry-forward.

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