

H. B. 4386

(By Delegates Caputo, D. Poling, Guthrie,
Manypenny, Poore, Diserio, Walker, Marshall
and Stephens)

[Introduced January 31, 2014; referred to the
Committee on Industry and Labor then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §29-6-9a, relating to
establishing seniority rights for public employees; defining
when seniority begins; setting standards for accumulation of
seniority; requiring notice of job postings; requiring
registers or certified lists of eligible applicants; allowing
senior employees the first right of refusal for additional
duty, overtime and promotions; and determining seniority in
case of absence.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §29-6-9a, to read as
follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-9a. Determination of seniority for public employees.

(a) A classified or classified exempt public employee begins

1 to accrue seniority upon commencement of the employee's duties.

2 (b) An employee shall receive seniority credit for each day
3 the employee is employed regardless of whether the employee
4 receives pay for that day: *Provided*, That an employee who is on an
5 approved leave of absence accrues seniority during the period of
6 time that the employee is on the approved leave of absence.

7 (c) Any employee whose employment is terminated either
8 voluntarily or through a reduction-in-force shall, upon
9 reemployment with the same employer in a regular full-time
10 position, receive credit for all seniority previously accumulated
11 at the date the employee's employment was terminated.

12 (d) Any employee whose employment has been terminated through
13 a reduction in force shall be listed by name on the preferred
14 recall list and shall retain all accumulated seniority for the
15 purpose of seeking reemployment with the employer from which he or
16 she was terminated and nothing in this article may be construed to
17 the contrary.

18 (e) Any employee employed for a full employment term but in a
19 part-time position shall receive seniority credit for each day of
20 employment prorated to the proportion of a full employment day the
21 employee is required to work: *Provided*, That this section does not
22 allow a regular full-time employee to be credited with less than a
23 full day of seniority credit for each day the employee is employed:
24 *Provided, however*, That this calculation of seniority for

1 part-time personnel is prospective and does not reduce any
2 seniority credit accumulated by any employee prior to the effective
3 date of this section: *Provided further*, That for the purposes of
4 this section a part-time employee is defined as an employee who is
5 employed less than three and one-half hours per day.

6 (f) Seniority accumulation for a regular employee:

7 (1) Begins on the date the employee enters upon regular
8 employment duties;

9 (2) Continues until the public employee's employment as a
10 regular employee is severed; and

11 (3) Does not cease to accumulate in any event where the
12 employer has authorized an absence whether without pay or due to
13 illness or other reason over which the employee has no control.

14 (g) Seniority of a regular employee does not continue to
15 accumulate under the following conditions:

16 (1) When an employee is willfully absent from employment
17 duties because of a concerted work stoppage or strike; or

18 (2) When an employee is suspended without pay.

19 (h) For all purposes including the filling of vacancies and
20 reduction in force, seniority shall be accumulated within
21 particular classification categories of employment as those
22 classification categories are referred to in this article.

23 (i) When implementing a reduction in force, the employee with
24 the least seniority within a particular classification category

1 shall be properly released and placed on the preferred recall list.
2 The particular classification title held by an employee within the
3 classification category may not be considered when implementing a
4 reduction in force.

5 (j) On or before December 31 of each year, each employer shall
6 post at each office the current certified list of public employees
7 by seniority in each classification. Each certified list shall
8 contain the name of each regularly full-time and part-time employed
9 person employed in each classification and the date that each
10 employee began performing his or her assigned duties in each
11 classification. Current seniority lists of all classifications
12 shall be available to employees upon request at the Division of
13 Personnel office. The Division shall provide the requested
14 information within fifteen working days.

15 (k) The seniority of a public employee who transfers out of a
16 class title or classification category of employment and
17 subsequently returns to that class title or classification category
18 of employment is calculated as follows:

19 (1) The employer shall establish the number of calendar days
20 between the date the employee left the class title or category of
21 employment in question and the date of return to the class title or
22 classification category of employment;

23 (2) This number of days shall be added to the employee's
24 initial seniority date to establish a new beginning seniority date

1 within the class title or classification category;

2 (3) The employee then shall be considered as having held
3 uninterrupted service within the class title or classification
4 category from the newly established seniority date; and

5 (4) The seniority of an employee who has had a break in the
6 accumulation of seniority as a result of being willfully absent
7 from employment duties because of a concerted work stoppage or
8 strike shall be calculated in the same manner.

9 (1) All decisions affecting promotions, transfers and the
10 filling of any vacancy or job posted for employment by any employer
11 shall be made on the basis of seniority, qualifications and
12 evaluation of past service. Where similarly qualified employees
13 are applicants who bid for the same position, the employee with the
14 greatest length of service time in a particular category of
15 employment shall be given priority consideration and shall have the
16 first right of refusal in all promotions and transfers.

17 (m) Additional-duty assignments.

18 (1) For the purpose of this article, "additional-duty
19 assignment" means an irregular job that occurs periodically or
20 occasionally such as, but not limited to, overtime due to periodic
21 work-related activity, overtime due to staffing shortages and
22 seasonal overtime activity.

23 (2) Notwithstanding any other provisions of this chapter to
24 the contrary, decisions affecting public employees with respect to

1 additional-duty assignments are made in the following manner:

2 (A) The employee with the greatest length of service time in
3 a particular category of employment is given priority in accepting
4 additional-duty assignments, followed by fellow employees on a
5 rotating basis according to the length of their service time until
6 all employees have had an opportunity to perform similar
7 assignments. The cycle then is repeated.

8 (B) An alternative procedure for making additional-duty
9 assignments within a particular classification category of
10 employment may be used if the alternative procedure is approved
11 both by the Division of Personnel Board and by an affirmative vote
12 of two thirds of the employees within that classification category
13 of employment.

14 (n) Each employer and the division shall post and date notices
15 of all job vacancies of existing or newly created positions in
16 conspicuous places for all public employees to observe for at least
17 ten working days.

18 (1) Posting locations include any website maintained by or
19 available for the use of any employer and the division.

20 (2) Notice of a job vacancy shall include the job description,
21 the period of employment, the amount of pay and any benefits and
22 other information that is helpful to prospective applicants to
23 understand the particulars of the job. Job postings for vacancies
24 made pursuant to this article shall be written to ensure that the

1 largest possible pool of qualified applicants may apply. Job
2 postings may not require criteria which are not necessary for the
3 successful performance of the job and may not be written with the
4 intent to favor a specific applicant.

5 (3) After the ten day minimum posting period, all vacancies
6 not filled within thirty days from the posting date notice of any
7 job vacancies of existing or newly created positions, shall be
8 posted in the same manner as the initial posting.

9 (4) The employer shall notify any person who has applied for
10 a job posted pursuant to this article of the status of his or her
11 application as soon as possible after the employer makes a hiring
12 decision regarding the posted position. Notice may be provided by
13 regular mail, electronic mail return receipt requested or by
14 interdepartmental mail: *Provided*, That written notice shall be
15 provided to employees that were not selected within five work days
16 after the employer makes a hiring decision regarding the posted
17 position.

18 (o) The seniority of a public employee is determined on the
19 basis of the length of time the employee has been employed within
20 a particular job classification. For the purpose of establishing
21 seniority for a preferred recall list as provided in this article,
22 a public employee who has been employed in one or more
23 classifications retains the seniority accrued in each previous
24 classification.

1 (p) If an employer is required to reduce the number of public
2 employees within a particular job classification, the following
3 conditions apply:

4 (1) The employee with the least amount of seniority within
5 that classification or grades of classification is properly
6 released and employed in a different grade of that classification
7 if there is a job vacancy;

8 (2) If there is no job vacancy for employment within that
9 classification or grades of classification, the public employee is
10 employed in any other job classification which he or she previously
11 held if there is a vacancy and retains any seniority accrued in the
12 job classification or grade of classification.

13 (q) After a reduction in force or transfer is approved an
14 employer in its sole and exclusive judgment may determine that the
15 reason for any particular reduction in force or transfer no longer
16 exists.

17 (1) If the employer makes this determination, it shall rescind
18 the reduction in force or transfer and notify the affected employee
19 in writing of the right to be restored to his or her former
20 position of employment.

21 (2) The affected employee shall notify the employer of his or
22 her intent to return to the former position of employment within
23 ten work days of being notified or lose the right to be restored to
24 the former position.

1 (3) The employer may not rescind the reduction in force of an
2 employee until all public employees with more seniority in the
3 classification category on the preferred recall list have been
4 offered the opportunity for recall to regular employment as
5 provided in this article.

6 (4) If there are insufficient vacant positions to permit
7 reemployment of all more senior employees on the preferred recall
8 list within the classification category of the public employee who
9 was subject to reduction in force, the position of the released
10 employee shall be posted and filled in accordance with this
11 article.

12 (r) All public employees whose seniority with the employer is
13 insufficient to allow their retention by the employer during a
14 reduction in work force shall be placed upon a preferred recall
15 list and shall be recalled to employment by the employer on the
16 basis of seniority.

17 (s) A public employee placed upon the preferred recall list
18 shall be recalled to any position openings by the employer within
19 the classification(s) where he or she had previously been employed,
20 to any lateral position for which the public employee is qualified
21 or to a lateral area for which a public employee has certification
22 and/or licensure.

23 (t) A public employee on the preferred recall list does not
24 forfeit the right to recall by the employer if compelling reasons

1 require him or her to refuse an offer of reemployment by the
2 employer.

3 (u) The employer shall notify all public employees on the
4 preferred recall list of all position openings that exist from time
5 to time. The notice shall be sent by certified mail to the last
6 known address of the public employee. Each public employee shall
7 notify the employer of any change of address.

8 (v) Position openings may not be filled by the employer,
9 whether temporary or permanent, until all public employees on the
10 preferred recall list have been properly notified of existing
11 vacancies and have been given an opportunity to accept
12 reemployment.

13 (w) Any employer failing to comply with the provisions of this
14 article may be compelled to do so by mandamus and is liable to any
15 party prevailing against the employer for court costs and the
16 prevailing party's reasonable attorney fee, as determined and
17 established by the court.

18 (1) A public employee denied promotion or employment in
19 violation of this article shall be awarded the job, pay and any
20 applicable benefits retroactively to the date of the violation.

21 (2) The employer is liable to any party prevailing against the
22 employer for any court reporter costs including copies of
23 transcripts.

24 (x) The seniority rights conferred herein shall apply

1 retroactively to all classified and classified exempt employees and
2 shall commence as of the effective date of this section.

3 (y) Rules of the division promulgated pursuant to section ten
4 of this article shall conform or be construed to conform to the
5 seniority provisions of this section.

NOTE: The purpose of this bill is to establish seniority preference for all civil service workers bidding on jobs, seeking to transfer, or affected by reduction in force.

This section is new; therefore, it has been completely underscored.