

**H. B. 2246**

(By Delegate Rodighiero)

[Introduced January 23, 2015; referred to the  
Committee on Government Organization then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-6-13, 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 extra 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 §29-6-13, to read as follows:

**ARTICLE 6. CIVIL SERVICE SYSTEM.**

**§29-6-13. Determination of seniority for public employees.**

(a) A classified or classified exempt public employee begins to accrue seniority upon commencement of the employee's duties.

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

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

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

13        (e) Any employee employed for a full employment term but in a part-time position shall  
14 receive seniority credit for each day of employment prorated to the proportion of a full employment  
15 day the employee is required to work. However, this section does not allow a regular full-time  
16 employee to be credited with less than a full day of seniority credit for each day the employee is  
17 employed. The calculation of seniority for part-time personnel is prospective and does not reduce  
18 any seniority credit accumulated by any employee prior to the effective date of this section. For the  
19 purposes of this section a part-time employee is defined as an employee who is employed less than  
20 three and one-half hours per day.

21        (f) Seniority accumulation for a regular employee:

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

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

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

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

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

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

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

12        (i) When implementing a reduction in force, the employee with the least seniority within a  
13 particular classification category shall be properly released and placed on the preferred recall list. The  
14 particular classification title held by an employee within the classification category may not be  
15 considered when implementing a reduction in force.

16        (j) On or before December 31 of each year, each employer shall post at each office the current  
17 certified list of public employees by seniority in each classification. Each certified list shall contain  
18 the name of each regularly full-time and part-time employed person employed in each classification  
19 and the date that each employee began performing his or her assigned duties in each classification.  
20 Current seniority lists of all classifications shall be available to employees upon request at the  
21 Division of Personnel office.

22        (k) The seniority of a public employee who transfers out of a class title or classification

1 category of employment and subsequently returns to that class title or classification category of  
2 employment is calculated as follows:

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

6       (2) This number of days shall be added to the employee's initial seniority date to establish a  
7 new beginning seniority date within the class title or classification category;

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

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

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

18       (m) Extra-duty assignments. --

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

22       (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting

1 public employees with respect to extra-duty assignments are made in the following manner:

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

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

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

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

15 (2) Notice of a job vacancy shall include the job description, the period of employment, the  
16 amount of pay and any benefits and other information that is helpful to prospective applicants to  
17 understand the particulars of the job. Job postings for vacancies made pursuant to this article shall  
18 be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may  
19 not require criteria which are not necessary for the successful performance of the job and may not be  
20 written with the intent to favor a specific applicant.

21 (3) After the ten day minimum posting period, all vacancies not filled within thirty days from  
22 the posting date notice of any job vacancies of existing or newly created positions, shall be posted in

1 the same manner as the initial posting.

2       (4) The employer shall notify any person who has applied for a job posted pursuant to this  
3 article of the status of his or her application as soon as possible after the employer makes a hiring  
4 decision regarding the posted position. Notice may be provided by regular mail, electronic mail  
5 return receipt requested or by interdepartmental mail. However, written notice shall be provided to  
6 employees who were not selected within five work days after the employer makes a hiring decision  
7 regarding the posted position.

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

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

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

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

21       (q) After a reduction in force or transfer is approved an employer in its sole and exclusive  
22 judgment may determine that the reason for any particular reduction in force or transfer no longer

1 exists.

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

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

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

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

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

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

22       (t) A public employee on the preferred recall list does not forfeit the right to recall by the

1 employer if compelling reasons 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 preferred recall list of all position  
4 openings that exist from time to time. The notice shall be sent by certified mail to the last known  
5 address of the public employee. Each public employee shall notify the employer of any change of  
6 address.

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

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

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

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

17 (x) The seniority rights conferred herein shall apply retroactively to all classified and classified  
18 exempt employees and shall commence as of the effective date of this section.

NOTE: The purpose of this bill is to recognize seniority for public employees for the purposes of promotion, transfer, advancement, lay off, reduction in force and recall.

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