

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4761**

By Delegate Burkhammer

[Introduced January 16, 2024; Referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §29-6-10 of the Code of West Virginia, 1931, as amended, relating to  
 2 requiring the Division of Personnel to reduce the time of hiring process to four weeks from  
 3 the date an application for employment is closed.

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

**ARTICLE                    6.                    CIVIL                    SERVICE                    SYSTEM.**

**§29-6-10. Rules of division.**

1            The board ~~shall have the authority to~~ may promulgate, amend or repeal rules, according to  
 2 Chapter §29A 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 the  
 11 board, the director shall allocate the position of every employee in the classified service to one of  
 12 the classes in the classified plan and the position of every employee in the classified-exempt  
 13 service to one of the positions in the classified-exempt plan. Any employee affected by the  
 14 allocation of a position to a class shall, after filing with the director of personnel a written request for  
 15 reconsideration thereof in such manner and form as the director may prescribe, be given a  
 16 reasonable opportunity to be heard thereon by the director. The interested appointing authority  
 17 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~~ The pay plan shall become effective only after it has been approved by the Governor after

21 submission to ~~him or her~~ the Governor by the board. Amendments to the pay plan may be made in  
22 the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the  
23 class of position in which ~~he or she~~ the person is employed. The principle of equal pay for equal  
24 work in the several agencies of the state government shall be followed in the pay plan as  
25 established hereby.

26 (3) For open competitive examinations to test the relative fitness of applicants for the  
27 respective positions in the classified service. ~~Such~~ The examinations need not be held until after  
28 the rules have been adopted, the service classified and a pay plan established, but shall be held  
29 not later than one year after this article takes effect. ~~Such~~ The examinations shall be announced  
30 publicly at least 15 days in advance of the date fixed for the filing of applications therefor, and may  
31 be advertised through the press, radio and other media. The director may, ~~however, in his or her~~  
32 ~~discretion,~~ continue to receive applications and examine candidates long enough to assure a  
33 sufficient number of eligibles to meet the needs of the service and may add the names of  
34 successful candidates to existing eligible lists in accordance with their respective ratings.

35 An additional five points shall be awarded to the score of any examination successfully  
36 completed by a veteran. A disabled veteran shall be entitled to an additional 10 points, rather than  
37 five points as aforesaid, upon successful completion of any examination.

38 The director shall promulgate a rule requiring that the hiring process not exceed four weeks  
39 after the time an employment application period is closed.

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

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

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

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

73 for a vacant position shall be notified by certified mail of the vacancy. It ~~shall be~~ is the responsibility  
74 of the employee to notify the agency of any change in his or her address.

75 Notwithstanding any other provision of the code to the contrary, except for the provisions of  
76 §5B-2-7 of this code, when filling vacancies at state agencies the directors of state agencies shall,  
77 for a period of twelve months after the layoff of a permanent classified employee in another  
78 agency, give preference to qualified permanent classified employees based on seniority and  
79 fitness over all but existing employees of the agency or its facilities: *Provided*, That employment of  
80 these persons who are qualified and who were permanently employed immediately prior to their  
81 layoff shall not supersede the recall rights of employees who have been laid off in such agency or  
82 facility.

83 (7) For the establishment of eligible lists for appointment and promotion within the  
84 classified service, upon which lists shall be placed the names of successful candidates in the order  
85 of their relative excellence in the respective examinations. Eligibility for appointment from any  
86 such list shall continue not longer than three years. An appointing authority shall make ~~his or her~~ a  
87 selection from the top 10 names on the appropriate lists of eligibles, or may choose any person  
88 scoring at or above the 90th percentile on the examination.

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

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

98 (9) For a period of probation not to exceed one year before appointment or promotion may

99 be made complete within the classified service.

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

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

109 (12) For discharge or reduction in rank or grade only for cause of employees in the  
110 classified service. Discharge or reduction of these employees shall take place only after the  
111 person to be discharged or reduced has been presented with the reasons for such discharge or  
112 reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or  
113 upon request to appear personally and reply to the appointing authority or his or her deputy:  
114 *Provided*, That upon an involuntary discharge for cause, the employer may require immediate  
115 separation from the workplace, or the employee may elect immediate separation. If separation is  
116 required by the employer in lieu of any advance notice of discharge, or if immediate separation is  
117 elected by an employee who receives notice of an involuntary discharge for cause, the employee  
118 is entitled to receive severance pay attributable to time the employee otherwise would have  
119 worked, up to a maximum of 15 calendar days following separation. Receipt of severance pay  
120 does not affect any other right to which the employee is entitled with respect to the discharge. The  
121 statement of reasons and the reply shall be filed as a public record with the director.  
122 Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be  
123 discharged from the classified service for absenteeism upon using all entitlement to annual leave  
124 and sick leave when such use has been due to illness or injury as verified by a physician's

125 certification or for other extenuating circumstances beyond the employee's control unless his or  
126 her disability is of such a nature as to permanently incapacitate ~~him or her~~ the employee from the  
127 performance of the duties of his or her position. Upon exhaustion of annual leave and sick leave  
128 credits for the reasons specified herein and with certification by a physician that the employee is  
129 unable to perform his or her duties, a permanent employee shall be granted a leave of absence  
130 without pay for a period not to exceed six months if such employee is not permanently unable to  
131 satisfactorily perform the duties of his or her position.

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

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

136 The provisions of this section are subject to any modifications contained in Chapter 5F of  
137 this code. The board may include in the rules provided for in this article such provisions as are  
138 necessary to conform to regulations and standards of any federal agency governing the receipt  
139 and use of federal grants-in-aid by any state agency, anything in this article to the contrary  
140 notwithstanding. The board and the director shall see that rules and practices meeting such  
141 standards are in effect continuously after the effective date of this article.

NOTE: The purpose of this bill is to require the Division of Personnel to reduce the time of hiring process to four weeks from the date an application for employment is closed.

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