

H. B. 2061

(By Delegate Caputo)

[Introduced January 15, 2015; 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 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: *Provided*, That an employee who is
3 on an approved leave of absence accrues seniority during the period of time that the employee is on
4 the approved leave of absence.

5 (c) Any employee whose employment is terminated either voluntarily or through a
6 reduction-in-force shall, upon reemployment with the same employer in a regular full-time position,
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: *Provided*, That this subsection does not allow a regular
16 full-time employee to be credited with less than a full day of seniority credit for each day the
17 employee is employed: *Provided, however*, That this calculation of seniority for part-time personnel
18 is prospective and does not reduce any seniority credit accumulated by any employee prior to the
19 effective date of this section: *Provided further*, That for the purposes of this section a part-time
20 employee is defined as an employee who is employed less than 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.
14 The 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. The division shall provide the requested information within fifteen
22 working days.

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

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

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

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

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

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

20 (m) Additional-duty assignments.

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

1 activity, overtime due to staffing shortages and seasonal overtime activity.

2 (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting
3 public employees with respect to additional-duty assignments are made in the following manner:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 public employee has certification and/or licensure.

2 (t) A public employee on the preferred recall list does not forfeit the right to recall by the
3 employer if compelling reasons require him or her to refuse an offer of reemployment by the
4 employer.

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

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

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

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

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

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

21 (y) Rules of the division promulgated pursuant to section ten of this article shall conform or
22 be construed to conform to the 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.