

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 165

FISCAL  
NOTE

BY SENATORS BALDWIN, CAPUTO, AND LINDSAY

[Introduced January 12, 2022; referred  
to the Committee on Government Organization; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §29-6-10 of the Code of West Virginia, 1931, as amended, relating  
2 to authorizing the transfer of personal leave by a former employee of a county board of  
3 education when the employee is subsequently employed by a state agency.

*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  
2 to §29A-1-1 *et seq.* 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~~ The 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~~ The examinations need not be held until after  
27 the rules have been adopted, the service classified and a pay plan established, but shall be held  
28 not later than one year after this article takes effect. ~~Such~~ The examinations shall be announced  
29 publicly at least 15 days in advance of the date fixed for the filing of applications therefor, and  
30 may be advertised through the press, radio, and other media. The director may, however, in his  
31 or her discretion, continue to receive applications and examine candidates long enough to assure  
32 a 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 10 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~~ may be hired for any vacancy in his or her job class or in a lower  
67 job class in the series until all eligible employees on layoff are given the opportunity to refuse that  
68 job class. An employee shall be recalled onto jobs within the county wherein his or her last place  
69 of employment is located or within a county contiguous thereto. Any laid-off employee who is  
70 eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the  
71 responsibility 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 §5B-2-7 of this code, when filling vacancies at state agencies the directors of state agencies  
74 shall, for a period of 12 months after the layoff of a permanent classified employee in another  
75 agency, give preference to qualified permanent classified employees based on seniority and  
76 fitness over all but existing employees of the agency or its facilities: *Provided*, That employment  
77 of these persons who are qualified and who were permanently employed immediately prior to  
78 their layoff shall not supersede the recall rights of employees who have been laid off in ~~such~~ the  
79 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 10 names on the appropriate lists of eligibles, or may choose any person  
85 scoring at or above the 90th 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  
94 attempted 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~~ may 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~~ may receive severance pay attributable to time the employee otherwise would have  
117 worked, up to a maximum of 15 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~~ may  
121 be discharged from the classified service for absenteeism upon using all entitlement to annual  
122 leave 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 the transfer of personal leave accrued by an employee of a county board of  
131 education pursuant to §18A-4-10 of this code, as sick leave when the employee is employed by  
132 a state agency within one year of the termination of the employee's employment with a county  
133 board of education.

134 ~~(13)~~ (14) For such other rules and administrative regulations, not inconsistent with this  
135 article, as may be proper and necessary for its enforcement.

136 ~~(14)~~ (15) The board shall review and approve by rules the establishment of all classified-  
137 exempt positions to assure consistent interpretation of the provisions of this article.

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

NOTE: The purpose of this bill is to authorize the transfer of personal leave accrued by a former employee of a county board of education when the employee is subsequently employed by a state agency.

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