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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 18, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Tari McClintock Crouse
Division of Personnel
Capitol Complex
Building 6, Room 416

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Administrative Rule of the West Virginia Division of Personnel, 143CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Division of Personnel

Subject: Administrative Rule of the West Virginia Division of Personnel, 143CSR1

PERTINENT DATES

Filed for public comment: May 18, 1999

Public comment period ended:

Filed following public comment period: August 6, 1999

Filed LRMRC: August 6, 1999

Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 contains definitions. A definition has been added for the term "open competitive examination". The definitions for the following terms have been clarified: Original appointment; pay increment; position description; reallocation; reclassification; and veterans' preference points. The term "temporary total disability benefits" has been deleted.

Section 4 relates to classification plans. It has been amended to clarify that the Director rather than the Board is responsible for allocating positions.

Language has been added which states that the Director may not reallocate a position based on temporary duties and responsibilities assigned to the position.

Subsection 4.8 relating to temporary classification upgrades is new. It allows an appointing authority, with the approval of the Director, to temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher pay grade due to a separation or an extended leave of absence, for a short-term project or in an emergency situation.

Section 5 relates to the compensation plan and salary regulations. It has been amended to clarify that an entry salary includes any applicable Board approved pay differential. It has also been amended to remove reference to the apprenticeship program which was abolished by the Legislature.

Subsection 5.5 relating to pay on promotion has been amended by adding new language which would allow employees whose salaries are above the maximum rates or within one increment for the positions to which they are being promoted to receive a salary increase of one increment with the promotion.

Subsection 5.6 relating to pay on demotion has been amended to provide that if the demotion is to a previously held position, the employee's salary is to be reduced to his or her last pay rate in the formerly held classification or the maximum pay rate of that classification, whichever is greater.

Subsection 5.8 relates to salary advancements. The provision regarding an exception for employees who have attained the maximum or above in the range has been amended to remove the limitation on those who received an increase in salary in the previous 12 months. It has also been amended to limit the salary advancement to the difference between 2 increments and the total percentage of all other increases in pay in the immediately preceding 12 month period.

Section 6 relates to applications and examinations. Subsection 6.6 relating to the scoring of examinations has been amended to provide that veterans' preference points are not added to final passing scores on promotional exams.

Section 7 relates to registers. It has been amended to provide that the life of scores on the register is one year unless the period is reduced by the Director. The current rule provides for a life of up to 3 years.

Section 11 relates to promotions, demotions and transfers. It has been amended to state that an appointing authority is not to treat an interagency transfer as a resignation.

Section 12 relates to separations, tenure and reinstatement. It states that the appointing authority is not to treat an inter-agency or intra-agency transfer as a resignation, except when the employee is resigning from a classified position to accept employment in a classified-exempt position.

Subsection 12.2 relates to dismissals. Language has been added which allows an appointing authority to require an employee

dismissed for cause to immediately vacate the work place. If the employee is required to vacate or vacates voluntarily, he or she is entitled to severance pay up to a maximum of 15 days. It also allows an appointing authority to dismiss an employee for job abandonment, if the employee is absent from work for more than 3 consecutive work days without notice to the appointing authority.

Subsection 12.6 relating to tenure of office has been deleted in its entirety.

Section 15 of the current rule relates to attendance and leave. Subsection 15.9 which relates to injury on the job has been deleted in its entirety and is contained in another proposed rule which will be before the Committee.

Section 19 relating to records and reports has been amended to require the Director to maintain applications for examination for at least one year after the date of the application.

Section 20 relating to confidentiality is new. It requires that the business of the Division be conducted in such a manner as to ensure the privacy rights of all applicants and employees in accordance with the State Freedom of Information Act.

Section 23 relates to training and development. Language has been deleted to remove reference to the apprenticeship program which was abolished by the Legislature.

AUTHORITY

Statutory authority: W.Va. Code, §29-6-10, which provides, in part, as follows:

The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a of this code, to implement the provisions of this article...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has a few minor technical modifications to suggest.