

## ADMINISTRATIVE LAW DIVISION

Form #2

FILED

FEB 18 3 32 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

AGENCY: Division of Corrections TITLE NUMBER: 90

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code § 25-1-21

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 4-

TITLE OF RULE BEING PROPOSED: Employment of Displaced Correctional  
Employees.

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON APRIL 30, 1994 AT 5:00 p.m.

West Virginia Div. of Corrections

112 California Avenue

Building 4, Room 300

Charleston, WV 25305

Attn: Operations Section

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.20

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Employment of Displaced Correctional Employees  
Type of Rule: X Legislative      Interpretive      Procedural  
Agency Division of Corrections  
Address 112 California Avenue, Room 300  
Charleston, WV 25305  
Ph: 558-2036

1. Effect of Proposed Rule - No Financial Impact

|                             | ANNUAL   |          | FISCAL YEAR |      |            |
|-----------------------------|----------|----------|-------------|------|------------|
|                             | INCREASE | DECREASE | CURRENT     | NEXT | THEREAFTER |
| <u>ESTIMATED TOTAL COST</u> | \$       | \$       | \$          | \$   | \$         |
| PERSONAL SERVICES           |          |          |             |      |            |
| CURRENT EXPENSE             |          |          |             |      |            |
| REPAIRS & ALTERNATIONS      |          |          |             |      |            |
| EQUIPMENT                   |          |          |             |      |            |
| OTHER                       |          |          |             |      |            |

2. Explanation of above estimates:

3. Objectives of these rules:

Rule Title: Employment of Displaced Correctional Employees

4. Explanation of Overall Economic Impact of Proposed Rule.

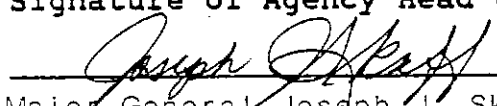
A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

C. Economic Impact on Citizens/Public at Large.

Date: February 18, 1994

Signature of Agency Head or Authorized Representative

  
Major General Joseph J. Skaff  
Secretary, Department of Public Safety

TITLE 90  
LEGISLATIVE RULE  
DIVISION OF CORRECTIONS

SERIES 3  
EMPLOYMENT OF DISPLACED CORRECTIONAL EMPLOYEES  
W. VA. CODE §§ 25-1-1 ET SEQ.

---

BRIEF SUMMARY OF RULE

The rule was developed to facilitate the transfer and/or reemployment of displaced correctional employees from the West Virginia Penitentiary to the Mount Olive Correctional Complex, the Huttonsville Correctional Center, and the Northern Regional Jail and Correctional Complex at Moundsville. West Virginia Code § 25-1-21 (1992) requires the Division of Corrections Commissioner to promulgate rules "to effectuate notice and procedures for said transfers . . . ." The construction of the Northern Regional Jail and Correctional Complex at Moundsville is scheduled for completion and opening in the Spring of 1994. Accordingly, the development and promulgation of this rule is necessary to ensure a planned and orderly movement of employees and inmates to this facility, while maintaining the necessary security to protect the public's interest.

TITLE 90  
LEGISLATIVE RULE  
DIVISION OF CORRECTIONS

SERIES 3  
EMPLOYMENT OF DISPLACED CORRECTIONAL EMPLOYEES  
W. VA. CODE §§ 25-1-1 ET SEQ.

---

SUMMARY OF RULE

The attached rule fulfills the requirement in West Virginia Code § 25-1-21 in accordance with W. Va. Code § 29A-1-1 et seq., that the Commissioner of Corrections promulgate rules to effectuate notice and procedures for the transfer of displaced correctional employees to the Mount Olive Correctional Complex, the Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville. Pursuant to the definitions, terms, and conditions of this rule, the Division of Corrections shall be obliged to implement the rule and supplemental procedures when transferring or employing present correctional employees in the aforementioned facilities.

TITLE 90  
LEGISLATIVE RULE  
DIVISION OF CORRECTIONS

SERIES 3  
EMPLOYMENT OF DISPLACED CORRECTIONAL EMPLOYEES  
W. VA. CODE §§ 25-1-1 ET SEQ.

---

**§ 90-3-1. General.**

1.1. Scope. -- This legislative rule establishes the procedure for the transfer of displaced correctional employees.

1.2. Authority. -- W. Va. Code § 25-1-21.

1.3. Filing date. --

1.4. Effective date. --

**§ 90-3-2. Definitions.**

2.1. Closure: The discontinuance of any service or unit, whether singular or collective, within the West Virginia Penitentiary.

2.2. Employee: A person who has successfully completed a six-month probationary period.

2.3. Employment priority list: A list of correctional officers employed at the West Virginia Penitentiary, at the time of closure, who are in good standing.

2.4. Good standing: Any employee not under disciplinary sanction or on probationary status. Disciplinary sanction for the purposes of transfer under § 25-1-21 is any suspension or demotion which occurred within twelve months prior to transfer.

2.5. Length of service: Tenure in the classified service.

2.6. Preference: Giving a priority in hiring to those displaced employees, who are otherwise qualified based on seniority and fitness over other applicants for correctional officer positions at Mount Olive, Huttonsville Correctional Center and Northern Regional Jail and Correctional Facility in accordance with W. Va. Code § 25-1-21 and § 29-6-10(6) and (7).

2.7. Probationary Period: A trial work period of six months designed to allow the appointing authority an opportunity to evaluate the ability of the employee to effectively perform the tasks assigned, adjust himself/herself to the organization and comply with the agency's policy and mission.

2.8. Recall: The reemployment of an employee affected by a reduction-in-force as specified in W. Va. Code § 29-6-10(6) and section 6.2(e) of these rules.

2.9. Staffing Requirements: The number and classification of positions available.

2.10. Transfer; Layoff List: A list of employees at the West Virginia Penitentiary who are in good standing, by occupational grouping, ranked by length of service.

### **§ 90-3-3. Service of Notice.**

3.1. Where practical the commissioner shall, not less than thirty days prior to staffing in the Mount Olive Correctional Complex, Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, give notice of such staffing for either an existing or new operational unit, or the closure of a unit or section, or discontinuance of a service within the West Virginia Penitentiary, to all employees of the Penitentiary. Consideration shall be given to security by not announcing the exact dates of closures.

### **§ 90-3-4. Closure of a Unit or Section; Discontinuance of a Service.**

4.1. Criteria for Transfer. In selecting employees for transfer, the commissioner, based on staffing requirements, shall give priority for employment to any person on a transfer list as defined in section 2 to a position equivalent to the position that person currently holds at the West Virginia Penitentiary or a lower position within the same occupational group.

4.2. Transfer. All transfers shall be in compliance with Division of Personnel Administrative Regulations. Promotion and demotion opportunities which may occur will be afforded in accordance with Division of Personnel Administrative Regulations and applicable Division of Corrections policies.

### **§ 90-3-5. Closure of Facility.**

5.1. Reduction-in-Force. At the time of final closure of the West Virginia Penitentiary at Moundsville, the commissioner shall give written notice to remaining employees of a reduction-in-force. Such notice shall be in accordance with W. Va. Code § 29-6-10(5), (6), W. Va. Code § 5F-2-2(d), the Division of Personnel Administrative Regulations, and section 3 of these rules.

5.2. Reemployment. Any correctional employee not selected for transfer to Mount Olive Correctional Complex, Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, and who wishes to remain eligible

for future employment at such facilities, shall remain on a priority employment list as defined in section 2 for a two-year period commencing with the date of the final closure of the West Virginia Penitentiary.

In selecting individuals for future employment at these facilities, the commissioner shall, based on staffing requirements, give priority to any correctional employee on the priority employment list in an available position equivalent to the position that person held at the West Virginia Penitentiary unless the commissioner determines that that person is physically or mentally unfit.

#### **§ 90-3-6. Procedures.**

6.1. Generally. Procedures for the transfer process shall be developed by the West Virginia Division of Corrections and approved by the West Virginia Division of Personnel.

##### **6.2. Procedures for Transfer and Reemployment.**

6.2(a). The Department of Public Safety's Division of Corrections shall establish preliminary staffing requirements at the Mount Olive Correctional Complex, the Huttonsville Correctional Center and the Northern Regional Jail and Correctional Complex at Moundsville.

6.2(b). Rank-ordered lists of all current employees of the West Virginia Penitentiary, who are in good standing, shall be developed and maintained. The lists shall be by occupational grouping and ranked by length of service.

6.2(c). As staffing requirements occur for either existing or new operational units at the Mount Olive Correctional Complex, the Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, available positions shall first be offered to existing employees of the West Virginia Penitentiary at Moundsville.

6.2(c) (1). Employees on the transfer list shall be offered, in rank order, an opportunity for transfer to positions equivalent to the positions that they currently hold at the Penitentiary or lower positions within the same occupational grouping. An employee who declines an opportunity to transfer may remain on the transfer list and remain eligible for transfer to future vacant positions at the Mount Olive Correctional Complex, the Huttonsville Correctional Center and the Northern Regional Jail and Correctional Complex at Moundsville until closure of the Penitentiary at Moundsville.

6.2(c) (2). Transfers, promotions, demotions or lateral class changes which may occur will follow W. Va. Code § 25-1-21, applicable Division of Personnel Administrative Regulations, and Division of Personnel policies.

6.2(d). No less than fifteen days prior to the closure of the West Virginia Penitentiary, all remaining employees at the Penitentiary shall be notified of the reduction-in-force in accordance with applicable Division of Personnel Administrative Regulations.

6.2(e). West Virginia Code § 29-6-10(6) provides for the recall of all permanent classified employees affected by a reduction-in-force at the West Virginia Penitentiary at Moundsville as follows: "[R]ecall shall be by reverse order of layoff to any job class that the employee had previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his place on the recall list for the same period of time as his seniority on the date of his layoff or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of the employee to notify the agency of any changes in his address."

6.2(f). For a period of two years following the closure of the West Virginia Penitentiary, priority shall be given to correctional employees affected by the reduction-in-force for employment to a subsequent vacant position at the Mount Olive Correctional Complex, the Huttonsville Correctional Center or the Northern Regional Jail and Correctional Complex at Moundsville, equivalent to the position that person held at the Penitentiary.

6.2(g). West Virginia Code § 39-6-10(6) and (7) provide preference for employment to all permanent classified employees affected by a reduction-in-force at the West Virginia Penitentiary at Moundsville. These sections provide that:

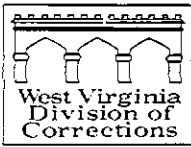
6.2(g) (1). "[W]hen filling vacancies at state agencies the directors of state agencies shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities; provided, that employment of these persons who are qualified and who were permanently employed immediately prior to their layoff shall not supersede the recall rights of employees who have been laid off in such agency or facility . . . ."

6.2(g) (2). "[E]ligibility for appointment from any such list shall continue not longer than one year and shall cease immediately upon appointment to a classified position . . . ."

6.2(h). The "bumping" provisions of W. Va. Code § 29-6-10(5) and the Division of Personnel Administrative Regulations are not applicable to employees affected by a reduction-in-force upon closure of the West Virginia Penitentiary at Moundsville, since that organizational unit ceases to remain in operation and likewise all positions of that organizational unit cease to exist. Other provisions of the aforementioned sections shall be applicable.

**§ 90-3-7. Equal Employment Opportunity.**

7.1. Non-discrimination. All employees are entitled to an equal employment opportunity and no employee shall be discriminated against based on race, color, religion, national origin, sex, age, disabled veteran status, Vietnam era veteran status, political affiliation, or disability.



DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF CORRECTIONS  
NICHOLAS J. HUN, COMMISSIONER



GASTON CAPERTON  
GOVERNOR

MAJOR GENERAL JOSEPH J. SKAFF  
SECRETARY

OFFICE OF THE COMMISSIONER  
112 CALIFORNIA AVE.  
STATE CAPITOL COMPLEX  
CHARLESTON, WV 25305-0280  
(304) 558-2036

MEMORANDUM

TO: The Honorable Ken Hechler  
Secretary of State

FROM: Major General Joseph J. Skaff  
Secretary, Department of Public Safety

DATE: February 18, 1994

RE: Proposed Legislative Rule

In accordance with West Virginia Code § § 25-1-21 and 29A-1-1 et seq., the Division of Corrections, with my consent, has drafted the attached legislative rule.

The rule was developed to facilitate the transfer and/or re-employment of displaced correctional employees from the West Virginia Penitentiary to the Mount Olive Correctional Complex, the Huttonsville Correctional Center and the Northern Regional Jail and Correctional Complex at Moundsville.

West Virginia Code § 25-1-21 (1992) requires the Division of Corrections Commissioner to promulgate rules . . . to effectuate notice and procedures for said transfers . . . ." The construction of the Northern Regional Jail and Correctional Complex at Moundsville is scheduled for completion and opening in the Spring of 1994. Accordingly, the development and promulgation of this rule is necessary to ensure a planned and orderly movement of employees and inmates to this facility, while maintaining the necessary security to protect the public interest.