

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Corrections TITLE NUMBER: 90

CITE AUTHORITY W. Va. Code § 25-1-21

AMENDMENT TO AN EXISTING RULE: YES___ NO_X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: _____ 90

Employment of Displaced Correctional Employees

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Authorized Signature

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

TITLE 90
LEGISLATIVE RULE
DIVISION OF CORRECTIONS

SERIES 4
EMPLOYMENT OF DISPLACED CORRECTIONAL EMPLOYEES
W. VA. CODE §§ 25-1-1 ET SEQ.

§ 90-4-1. 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. --

§ 90-4-2. 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 full time 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 W. Va. Code § 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).

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 or 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 this rule.

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.

§ 90-4-3. 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 the open position 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. The Commissioner of Corrections shall consider security by not announcing the exact dates of closures.

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

4.1. Criteria for Transfer. Employees are eligible for transfer to another institution as units or sections of the West Virginia Penitentiary are closed or services discontinued. 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 of this rule 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.

§ 90-4-5. Closure of Facility.

5.1. Reduction-in-Force. No less than 15 days prior to final closure of the West Virginia Penitentiary at Moundsville, the commissioner shall give written notice to remaining employees of a reduction-in-force. The notice and reduction in force 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 this rule.

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 the 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.

§ 90-4-6. 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). The Division of Corrections shall develop and maintain rank-ordered lists of all current employees of the West Virginia Penitentiary, who are in good standing. 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, Corrections shall offer available positions to existing employees of the West Virginia Penitentiary at Moundsville.

6.2(c) (1). The Division of Corrections shall offer employees on the transfer list, 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). 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 are applicable.

§ 90-4-7. 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.



FILED

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West Virginia Legislature
Legislative Rule-Making Review Committee

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

October 2, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Major General Joseph Skaff
Secretary
Department of Public Safety
Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Employment of Displaced Correctional Employees

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 X
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. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Rita Stuart, Counsel