

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

ENROLLED

Senate Bill 2003

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Passed October 17, 2017; in effect from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11B-1-8; and to amend said code by adding thereto a new section,
3 designated §17-2A-24, all relating generally to employment procedures of the Division of
4 Highways and the Tax Division of the Department of Revenue; authorizing the Tax
5 Commissioner and the Commissioner of Highways to implement special employment
6 procedures for personnel positions in their respective divisions; making legislative
7 findings; defining terms; establishing requirements for the special employment
8 procedures; exempting Tax Division of the Department of Revenue and Division of
9 Highways from certain other employment procedures; permitting recommendations for
10 new schedules of compensation; exempting Division of Personnel from involvement in
11 certain grievance claims or settlements; directing Division of Personnel to facilitate special
12 employment procedures; requiring Division of Personnel to perform any lawful action
13 necessary to initiate or complete employment transactions of the Division of Highways or
14 the Tax Division under newly established employment procedures; providing for continued
15 application of due process; maintaining efficacy of code provisions prohibiting nepotism,
16 favoritism and discrimination under the special employment procedures; authorizing the
17 Commissioner of Highways and the Tax Commissioner to promulgate emergency rules;
18 and requiring the Commissioner of Highways and the Tax Commissioner to propose
19 legislative rules for the implementation of the special employment procedures authorized
20 for their respective agencies.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §11B-1-8; and that said code be amended by adding thereto a new section,
3 designated §17-2A-24, all to read as follows:

CHAPTER 11. DEPARTMENT OF REVENUE.

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-8. Special employment procedures for Tax Division personnel.

1 (a) *Legislative findings and intent.* —

2 (1) The Tax Division of the Department of Revenue has approximately one hundred
3 vacancies. The Legislature finds that the division has long had difficulty filling positions which are
4 essential to efficiently and effectively administering, collecting and enforcing the tax laws of this
5 state. The Legislature finds that, to address this problem, the hiring and retention processes of
6 the division must be streamlined to effectively and efficiently meet personnel needs while still
7 affording applicants and employees the due process protections of classified service.

8 (2) The ratification of the Roads to Prosperity Amendment of 2017 to the Constitution of
9 West Virginia will result in substantially increased funding for roads and highways in the state and
10 the opportunity for in-state and out-of-state contractors to bid on road projects. The need to ensure
11 that all businesses are in compliance with the tax laws of this state will exacerbate the division's
12 staffing shortage.

13 (3) The purpose of this section is to allow the division to employ qualified applicants in
14 vacant and new personnel positions within the division in a timely manner and to ensure that the
15 division maintains an adequate workforce to effectively and fairly administer, collect and enforce
16 the tax laws of this state.

17 (b) *Definitions.* — As used in this section:

18 (1) "Commissioner" means the Commissioner of the Tax Division of the Department of
19 Revenue or his or her designee; and

20 (2) "Division" means the Tax Division of the Department of Revenue.

21 (c) *Special employment procedure; requirements.* — The commissioner shall implement
22 the special merit-based application and appointment procedure authorized by the provisions of
23 this section for all the employees of the division to ensure and provide for the selection and
24 retention of competent and qualified personnel. The special application and employment

25 procedure established pursuant to this section shall be effective on and after December 1, 2017,
26 and shall be subject to the following requirements:

27 (1) The Division of Personnel shall provide competitive registers of eligible applicants
28 when requested by the division to do so within five business days of receipt of the request;

29 (2) Any position to be filled internally shall be posted for seven calendar days before the
30 division may select an applicant. For positions to be filled with applicants from outside of the
31 division, the public service announcement shall be posted for not less than fourteen calendar
32 days;

33 (3) Postings shall be active for up to one year;

34 (4) Notwithstanding any provision of law or rule promulgated under the provisions of this
35 code, the division may employ any person listed on the register for employment as a Tax and
36 Revenue Auditor 1, Tax and Revenue Auditor 2, Tax and Revenue Auditor 3, Revenue Agent 1,
37 Revenue Agent 2, Investigator 2 or Investigator 3 without regard to the person's position on the
38 applicable register;

39 (5) The division shall have full authority to evaluate applicants for employment or
40 promotion within the division to positions within the classified service and classified-exempt
41 service. The division shall have sole authority to determine whether applicants for positions with
42 the division meet minimum position requirements;

43 (6) The division shall have full authority to make classification determinations for positions
44 within the division by using the classification system approved by the State Personnel Board. The
45 division may independently submit to the State Personnel Board recommendations for the
46 approval of new division classifications or the amendment of current division classifications;

47 (7) The division shall have full authority to exercise its discretion regarding the application
48 of the Division of Personnel's system of compensation for positions within the classified and
49 classified-exempt service: *Provided*, That application of this subdivision shall be uniform. The

50 division may independently submit to the State Personnel Board recommendations for the
51 approval of a special pay scale for the division's personnel;

52 (8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of
53 Personnel shall not be a mandatory party to any public employee grievance filed against the
54 division. The Division of Personnel shall not be a signatory to, and may not override or otherwise
55 challenge, the division's decisions regarding settlement terms and conditions in employee
56 grievances or other legal proceedings;

57 (9) The Division of Personnel shall facilitate or perform any lawful action necessary to
58 initiate or complete the division's employment transactions, including, but not limited to, posting
59 positions on applicable systems, initiating public service announcements when requested by the
60 division, and processing necessary forms;

61 (10) The division shall comply with all applicable record retention requirements provided
62 by law;

63 (11) The division is authorized to declare any positions effectively vacant due to employee
64 separations, which were not processed prior to the division being placed under the wOASIS
65 system, vacant and subject to being filled pursuant to the provisions of this section;

66 (12) The division shall have the flexibility to utilize all vacant position numbers when
67 posting to fill a vacancy and to post vacant positions utilizing multiple classifications with
68 corresponding job descriptions when the commissioner determines it to be necessary and in the
69 best interest of the division; and

70 (13) For purposes of this section, a vacancy created when an employee of the division
71 separates or goes on terminal leave may be posted upon receipt of the notice that the employee
72 separated or commenced such leave.

73 (d) *Exemption from regular application and appointment requirements.* — When seeking
74 applications or making appointments pursuant to the special procedure authorized by subsection
75 (c) of this section, the division is not required to comply with Division of Personnel procedures for

76 seeking applications and making appointments to classified service positions as provided by the
77 provisions of article six, chapter twenty-nine of this code or in any other provision of this code,
78 including those procedures promulgated in procedural or legislative rules promulgated by the
79 commissioner pursuant to article three, chapter twenty-nine-a of this code, except that this section
80 does not exempt the division from provisions of this code, prohibiting nepotism, favoritism,
81 discrimination or unethical practices related to appointment, or the public employee grievance
82 system.

83 (e) The commissioner may promulgate emergency rules and shall propose legislative
84 rules pursuant to the provisions of article three, chapter twenty-nine-a of this code as may be
85 necessary to implement and comply with the provisions of this section.

86 (f) The provisions of this section shall apply notwithstanding the provisions of article six,
87 chapter twenty-nine of this code to the contrary.

88 (g) Classified employees of the division shall continue to be covered by the civil service
89 system and may utilize any applicable public employee grievance process.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. THE WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-24. Special employment procedures for Division of Highways personnel.

1 (a) *Legislative findings and intent.* —

2 (1) The Legislature previously commissioned a performance audit to assess and improve
3 the effectiveness and efficiency of the core operations of the Division of Highways. The Division
4 of Highways has long had difficulty filling positions which are essential to constructing and
5 maintaining the state's highways and bridges. The Legislature finds that the hiring and retention
6 processes of the division must be streamlined to effectively and efficiently meet personnel needs
7 while still affording applicants and employees the due process protections of classified service.

8 (2) The Legislature has recently approved increased funding for the division which will
9 exacerbate its staffing shortage of hundreds of positions.

10 (3) The purpose of this section is to allow the Division of Highways to employ qualified
11 applicants to vacant and new personnel positions in the division in a timely manner and to ensure
12 that the Division of Highways has an adequate workforce sufficient to maintain safe roadways for
13 the citizens of West Virginia.

14 (b) *Definitions.* — As used in this section:

15 (1) “Commissioner” means the Commissioner of the Division of Highways or his or her
16 designee; and

17 (2) “Division” means the Division of Highways.

18 (c) *Special employment procedure; requirements.* — The commissioner shall implement
19 the special merit-based application and appointment procedure authorized by the provisions of
20 this section for all the employees of the division to ensure and provide for the selection and
21 retention of competent and qualified personnel. The special application and employment
22 procedure established pursuant to this section shall be effective on and after December 1, 2017,
23 and shall be subject to the following requirements:

24 (1) The Division of Personnel shall provide competitive registers of eligible applicants
25 when requested by the division to do so within five business days of receipt of the request;

26 (2) Any position to be filled internally shall be posted for seven calendar days before the
27 division may select an applicant. For positions to be filled with an applicant from outside of the
28 division, the public service announcement shall be posted for not less than fourteen calendar
29 days;

30 (3) Postings shall be active for up to one year;

31 (4) Notwithstanding any provision of law or of any rule promulgated under the provisions
32 of this code, the division may employ any person listed on the Transportation Worker I register

33 for employment as a Transportation Worker I without regard to the person's position on said
34 register;

35 (5) The division shall have full authority to evaluate applicants for employment or
36 promotion within the division to positions within the classified service and classified-exempt
37 service. The division shall have sole authority to determine whether applicants for positions with
38 the division meet minimum position requirements;

39 (6) The division shall have full authority to make classification determinations for positions
40 within the division by using the classification system approved by the State Personnel Board. The
41 division may independently submit to the State Personnel Board recommendations for the
42 approval of new division classifications or the amendment of current division classifications;

43 (7) The division shall have full authority to exercise its discretion regarding the application
44 of the Division of Personnel's system of compensation for positions in the division within the
45 classified and classified-exempt service: *Provided*, That application of the provisions of this
46 subdivision shall be uniform. The division may independently submit to the State Personnel Board
47 recommendations for the approval of a special pay scale for the division's personnel;

48 (8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of
49 Personnel shall not be a mandatory party to any public employee grievance filed against the
50 division. The Division of Personnel shall not be a signatory to, and may not override or otherwise
51 challenge, the division's decisions regarding settlement terms and conditions in employee
52 grievances or other legal proceedings;

53 (9) The Division of Personnel shall facilitate or perform any lawful action necessary to
54 initiate or complete the division's employment transactions, including, but not limited to, posting
55 positions on applicable systems, initiating public service announcements when requested by the
56 division, and processing necessary forms;

57 (10) The division shall comply with all applicable record retention requirements provided
58 by law;

59 (11) The division is authorized to declare any positions effectively vacant due to employee
60 separations, which were not processed prior to the division being placed under the wOASIS
61 system, vacant and subject to being filled pursuant to the provisions of this section;

62 (12) The division shall have the flexibility to utilize all vacant position numbers when
63 posting to fill a vacancy and to post vacant positions utilizing multiple classifications with
64 corresponding job descriptions when the commissioner determines it to be necessary and in the
65 best interest of the agency; and

66 (13) For purposes of this section, a vacancy created when an employee of the division
67 separates or goes on terminal leave may be posted upon receipt of the notice that the employee
68 has separated or commenced such leave.

69 (d) *Exemption from regular application and appointment requirements.* — When seeking
70 applications or making appointments pursuant to the special procedure authorized by subsection
71 (c) of this section, the division is not required to comply with Division of Personnel procedures for
72 seeking applications and making appointments to classified service positions as provided by the
73 provisions of article six, chapter twenty-nine of this code or any other provision of this code,
74 including those procedures promulgated by legislative rules, subject however to the following
75 exceptions:

76 (1) This section does not exempt the division from provisions of this code, prohibiting
77 nepotism, favoritism, discrimination or unethical practices related to employment and promotion,
78 or the public employee grievance system; and

79 (2) The provisions of this section may not be applied to hiring procedures applicable to
80 any division classified service position or employee in any manner that disqualifies the division
81 for eligibility for any federal highway funds or assistance.

82 (e) *Rules.* — The commissioner may promulgate emergency rules and shall propose
83 legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code as
84 may be necessary to implement and comply with the provisions of this section.

85 (f) The provisions of this section shall apply notwithstanding any provisions of article six,
86 chapter twenty-nine of this code to the contrary.

87 (g) Classified employees of the division shall continue to be covered by the civil service
88 system and may utilize any applicable public employee grievance process.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2017.

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Governor