

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

Introduced

Senate Bill 2003

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[Introduced October 16, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
 2 sections, designated §29-6-4a and §29-6-4b, all relating generally to requiring the
 3 Commissioner of Highways and Tax Commissioner to implement special hiring procedure
 4 for personnel positions in their respective divisions; establishing requirements for this
 5 special hiring procedure; exempting Division of Highways and Tax Division from certain
 6 hiring procedures; instituting new procedures; authorizing new schedules of
 7 compensation; exempting Division of Personnel from certain grievance claims; providing
 8 for retention of due process, anti-favoritism and anti-discrimination requirements; requiring
 9 the Commissioner of Highways to propose legislative rules; and authorizing the Tax
 10 Commissioner to propose emergency rules.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto two
 2 new sections, designated §29-6-4a and §29-6-4b, all to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4a. Special Appointment Procedures for Division of Highways Personnel.

1 (a) Legislative Intent.--

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

8 (2) The Legislature has recently approved increased funding for the roads and highways
 9 of the state which will exacerbate its staffing shortage, which currently consists of several hundred
 10 vacancies.

11 (3) The purpose of this section is to allow the Division of Highways to appoint qualified

12 applicants to vacant and new personnel positions in the division in a timely manner and to ensure
13 that the Division of Highways maintains an adequate workforce to maintain safe roadways for the
14 citizens of West Virginia.

15 (b) *Definitions.* - As used in this section:

16 (1) "Commissioner" means the Commissioner of the Division of Highways or his or her
17 designee; and

18 (2) "Division" means the Division of Highways.

19 (c) *Special Hiring Procedure; Requirements* -- The commissioner shall implement the
20 special merit based application and appointment procedure created in this section for all the
21 employees of the division to ensure and provide for the selection of competent and qualified
22 personnel. The special application and appointment procedure required by this section shall go
23 into effect on December 1, 2017, and shall meet the following requirements:

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

26 (2) The Division of Personnel shall continue to prepare, maintain, and share a list of
27 disqualified candidates who are not suitable for positions in state government;

28 (3) Any position to be filled internally shall be posted for five calendar days before the
29 division may select an applicant. For positions to be filled with an applicant from outside of the
30 division, the position shall be posted for not more than fourteen calendar days;

31 (4) Postings shall be viable for one year;

32 (5) Notwithstanding any provision of the code or of any rule to the contrary, the division is
33 authorized to interview and hire any person listed on the Transportation Worker I register for
34 employment as a Transportation Worker I without regard to the person's position on said register;

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

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

42 (8) The division shall have full authority to exercise its discretion regarding the application
43 of the Division of Personnel's system of compensation for positions within the classified and
44 classified-exempt service. The division may independently submit to the State Personnel Board
45 recommendations for the approval of a special pay scale for the division's personnel;

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

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

55 (11) The division shall comply with all applicable record retention requirements provided
56 by law;

57 (12) The division is authorized to process multiple leaves of absence simultaneously within
58 the wvOASIS system;

59 (13) The division shall have the flexibility to utilize all vacant position numbers when
60 posting to fill a vacancy and to post vacant positions utilizing multiple classifications when the
61 commissioner determines it to be necessary and in the best interest of the agency; and

62 (14) For purposes of this section, a vacancy created when an employee of the division
63 goes on terminal leave shall be posted upon receipt of the notice that the employee has begun

64 such leave.

65 (d) Exemption from regular application and appointment requirements -- When seeking
66 applications or making appointments pursuant to the special procedure required by subsection
67 (c) of this section, the division is not required to comply with Division of Personnel procedures for
68 seeking applications and making appointments to classified service positions as provided in this
69 article or in any other provision of this code, including those procedures promulgated by legislative
70 rules, subject however to the following exceptions:

71 (1) This section does not exempt the division from the requirements of sections twenty
72 and twenty-one of this article, including the prohibition against favoritism, discrimination or
73 unethical practices related to appointment, or the public employee grievance system; and

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

77 (e) Rules. -- The commissioner shall propose legislative rules pursuant to the provisions
78 of article three, chapter twenty-nine-a of this code as may be necessary to implement and comply
79 with the provisions of this section.

80 (f) The provisions of this section shall apply notwithstanding any other provision of this
81 article or article six-A of this chapter to the contrary.

82 (g) Employees of the division who are not in the classified-exempt service shall continue
83 to be covered by the civil service system and may utilize any applicable public employee
84 grievance process.

§29-6-4b. Special Appointment Procedures for Tax Division Personnel.

1 (a) Legislative Intent.--

2 (1) The Tax Division of the Department of Revenue has vacancies throughout the division
3 that the division is having difficulty filling. One key issue the division has long had is difficulty filling
4 positions which are essential to efficiently and effectively administering, collecting and enforcing

5 the tax laws of this state. To address this problem, the hiring and retention processes must be
6 streamlined to effectively and efficiently meet the personnel needs of the division while still
7 affording applicants and employees the due process protections of classified service.

8 (2) The voters recently ratified the Roads to Prosperity Amendment of 2017 to the
9 Constitution of West Virginia, which will result in increased funding for the roads and highways of
10 the state and the opportunity for in-state and out-of-state contractors to bid on road projects. The
11 need to ensure that all out-of-state businesses are properly complying with the tax laws of this
12 state will exacerbate the division's staffing shortage, which currently consists of one hundred
13 vacancies.

14 (3) The purpose of this section is to allow the division to appoint qualified applicants to
15 vacant and new personnel positions in the division in a timely manner and to ensure that the
16 division maintains an adequate workforce to administer, collect and enforce the tax laws of this
17 state to ensure a level playing field for in-state and out-of-state businesses.

18 (b) Definitions. - As used in this section:

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

21 (2) "Division" means the Tax Division.

22 (c) Special Hiring Procedure; Requirements -- The commissioner shall implement the
23 special merit based application and appointment procedure created in this section for all the
24 employees of the division to ensure and provide for the selection of competent and qualified
25 personnel. The special application and appointment procedure required by this section shall go
26 into effect on December 1, 2017, and shall meet the following requirements:

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

29 (2) The Division of Personnel shall continue to prepare, maintain, and share a list of
30 disqualified candidates who are not suitable for positions in state government;

31 (3) Any position to be filled internally shall be posted for five calendar days before the
32 division may select an applicant. For positions to be filled with an applicant from outside of the
33 division, the position shall be posted for not more than fourteen calendar days;

34 (4) Postings shall be viable for one year;

35 (5) Notwithstanding any provision of the code or rule to the contrary, the division is
36 authorized to interview and hire any person listed on the register for employment as a Tax and
37 Revenue Auditor 1, Tax and Revenue Auditor 2, Tax and Revenue Auditor 3, Revenue Agent 1,
38 Revenue Agent 2, Investigator 2, Investigator 3 without regard to the person's position on the
39 applicable register;

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

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

47 (8) 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. The division may independently submit to the State Personnel Board
50 recommendations for the approval of a special pay scale for the division's personnel;

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

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

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

62 (12) The division is authorized to process multiple leaves of absence simultaneously within
63 the wvOASIS system;

64 (13) The division shall have the flexibility to utilize all vacant position numbers when
65 posting to fill a vacancy and to post vacant positions utilizing multiple classifications when the
66 commissioner determines it to be necessary and in the best interest of the division; and

67 (14) For purposes of this section, a vacancy created when an employee of the division
68 goes on terminal leave shall be posted upon receipt of the notice that the employee has begun
69 such leave.

70 (d) Exemption from Regular Application and Appointment Requirements. -- When seeking
71 applications or making appointments pursuant to the special procedure required by subsection
72 (c) of this section, the division is not required to comply with Division of Personnel procedures for
73 seeking applications and making appointments to classified service positions as provided in this
74 article or in any other provision of this code, including those procedures promulgated in procedural
75 or legislative rules promulgated by the commissioner pursuant to article three, chapter twenty-
76 nine-a of this code, except that this section does not exempt the division from the requirements
77 of sections twenty and twenty-one of this article, including the prohibition against favoritism,
78 discrimination or unethical practices related to appointment, or the public employee grievance
79 system.

80 (e) The commissioner may promulgate an emergency legislative rule pursuant to the
81 provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement
82 and comply with the provisions of this section.

83 (f) The provisions of this section shall apply notwithstanding any other provision of this
84 article or article six-A of this chapter to the contrary.

85 (g) Employees of the division who are not in the classified-exempt service shall continue
86 to be covered by the civil service system and may utilize any applicable public employee
87 grievance process.

NOTE: The purpose of this bill is to provide an efficient, fast and fair merit based system of hiring new employees and retaining current employees while maintaining the current protections afforded under the classified service. Without this bill, Division of Highways will not be able to meet the current demand for employees to maintain our roads and highways much less, the increased demand triggered by increased funding for highway construction. Without this bill, the Tax Division will not be able to meet the current demand for employees to administer, collect and enforce the tax laws of this state.

This bill shortens time frames for completing personnel actions by the Division of Highways, the Tax Division and the Division of Personnel. It reduces the duplicative multi-level approvals of personnel decisions but retains due process protections. The Joint Committee on Government and Finance will receive quarterly reports from the Division of Highways and the Division of Personnel and both agencies are required to jointly propose emergency and legislative rules to effectuate the provisions of this section.

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