

**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.