

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **House Bill 2608**

**FISCAL  
NOTE**

BY DELEGATE STATLER

[Introduced February 21, 2017;

Referred to Roads and Transportation then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §17-2A-8d; and to amend said code by adding thereto a new section,  
 3 designated §29-6-4a, all relating to requiring the Commissioner of Highways to contract  
 4 with private providers or contractors for certain emergency maintenance operations if the  
 5 Division of Highways is unable to complete such operations in a timely manner; creating  
 6 a provisional appointment procedure for Division of Highway positions necessary for snow  
 7 and ice removal from roadways; authorizing the Division of Highways to solicit applications  
 8 and appoint qualified applicants to provisional snow and ice removal positions pending  
 9 permanent appointment; exempting provisional appointments for snow and ice removal  
 10 services from State Personnel Board Procedures and oversight; creating a process by  
 11 which individual provisional snow and ice removal appointees will be converted to  
 12 permanent employees within the classified service system once certain requirements are  
 13 met; and requiring the Division of Highways to follow ethical guidelines and certain  
 14 practices when posting provisional positions and making provisional appointments to snow  
 15 and ice removal positions.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, be amended by adding thereto a new section,  
 2 designated §17-2A-8d; and that said code be amended by adding thereto a new section,  
 3 designated §29-6-4a, all to read as follows:

**CHAPTER 17. ROADS AND HIGHWAYS.**

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§17-2A-8d. Contracts with private providers or contractors for emergency maintenance operations.**

1 (a) In the event that the Division of Highways is unable to complete emergency  
 2 maintenance operations in a timely manner, the Commissioner of Highways shall contract with

3 private providers or contractors to perform those operations in a safe and timely manner.

4 (b) The term “emergency maintenance operations” includes snow and ice removal, the  
5 clearing of debris from and beside roadways, and any other operations necessary to clear an  
6 obstruction causing delays in travel or commerce upon a roadway.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 6. CIVIL SERVICE SYSTEM.

#### **§29-6-4a. Special provisional appointment procedure for snow and ice removal services.**

1 (a) *Legislative Intent.*

2 The purpose of this section is to allow the division to appoint qualified applicants to snow  
3 and ice removal positions in an expedited manner, in order to ensure that the Division of Highways  
4 maintains an adequate workforce to keep roadways safe for the citizens of West Virginia during  
5 inclement weather.

6 (b) *Definitions.*

7 (1) “Base pay” refers to an employee’s rate of pay for services performed, excluding  
8 overtime pay and any employment benefits.

9 (2) “Commissioner” refers to the Commissioner of the Division of Highways or his or her  
10 designee.

11 (3) “Division” refers to the Division of Highways.

12 (4) “Snow and ice removal services” means any position within the Division of Highways  
13 involving the removal of snow or ice from roadways or any treatment of roadways or maintenance  
14 of equipment necessary to remove snow or ice from roadways.

15 (c) *Provisional Appointment Authorized; Exemption from Division of Personnel*  
16 *Requirements for Appointment.*

17 (1) Notwithstanding any other provision of this code, the division may solicit employment  
18 applications for snow and ice removal positions and may appoint a qualified applicant to a snow

19 and ice removal position on a provisional basis: *Provided*, That an applicant must meet the  
20 minimum job qualifications for classified snow and ice removal positions developed by the Division  
21 of Personnel before being appointed to a provisional position.

22 (2) Notwithstanding any other provision of this code, the division may administer any  
23 necessary tests directly to applicants to determine whether applicants meet the minimum  
24 qualifications for snow and ice removal positions.

25 (3) Notwithstanding any other provision of this code, when making provisional  
26 appointments pursuant to this section, the division is not required to follow Division of Personnel  
27 procedures for making appointments to classified service positions, including those procedures  
28 promulgated by legislative rules. The division is not subject to Division of Personnel oversight  
29 when making provisional appointments pursuant to this section: *Provided*, That nothing in this  
30 section exempts the division or its staff from the requirements of sections twenty and twenty-one  
31 of this article, including the prohibition against favoritism, discrimination or otherwise unethical  
32 practices related to appointment.

33 (d) *Conversion of Provisional Appointment to Permanent, Classified Appointment.*

34 Notwithstanding any other provision of this code, after an individual has been appointed  
35 to a provisional snow and ice removal position for a period of six months, the individual will  
36 become a permanent, classified-nonexempt employee if the following conditions are met:

37 (A) The position meets the statutory and regulatory requirements to be included in the  
38 classified service system, with the exception of any requirements related to appointment  
39 procedures;

40 (B) The commissioner certifies to the Division of Personnel, in writing, that the individual  
41 under consideration for permanent employment has satisfactorily performed all requirements of  
42 the snow and ice removal position for a period of six months and the commissioner recommends  
43 the individual for permanent appointment;

44 (C) The commissioner provides a copy of the individual's application materials and any

45 examination results to the Division of Personnel and certifies, in writing, that the individual under  
46 consideration for permanent employment was selected for provisional employment based on  
47 merit and fitness for the position, in comparison to other applicants, and that the division followed  
48 the requirements of sections twenty and twenty-one of this article in making the provisional  
49 appointment;

50 (D) The Division of Personnel reviews the documentation required by paragraph (C) of  
51 this subdivision and determines that no evidence in the record indicates that discriminatory or  
52 otherwise unethical appointment practices led to the individual's provisional appointment;

53 (E) The commissioner describes to the Division of Personnel, in writing, any disciplinary  
54 action taken against the individual under consideration for permanent employment and none of  
55 the incidents described are serious in nature or involve risk to the safety of other division  
56 employees or to the public; and

57 (F) The Division of Personnel has reviewed the individual's qualifications and the individual  
58 meets the minimum qualifications for permanent appointment to the classified snow and ice  
59 removal position.

60 (e) Requirements for Provisional Appointment Practices.

61 (1) With the exception of the provisional nature of a position, the position description for  
62 a provisional ice and snow removal position created pursuant to this section will be the same as  
63 the position description for the corresponding permanent ice and snow removal position within  
64 the classified service system.

65 (2) The base pay rate for an individual appointed pursuant to this section will be  
66 determined in the same manner as for a similarly situated individual holding a permanent,  
67 classified position within the division and performing the same snow and ice removal duties.

68 (3) The commissioner will give public announcement of all open provisional snow and  
69 ice removal positions and all open competitive examinations at least fifteen days in advance of  
70 the closing date for receipt of applications. The commissioner will make every reasonable effort

71 to attract qualified persons to apply for provisional snow and ice removal positions or to compete  
72 in necessary examinations. Notices of examinations and other public announcement of positions  
73 may be geographically restricted to places where applicants are needed. All public announcement  
74 of positions or examinations must include the position description as well as the final date on  
75 which applications will be accepted, and any other application requirements.

76 (4) In making an appointment to a provisional snow and ice removal position pursuant to  
77 this section, the division will make an appointment from the available pool of applicants based  
78 solely on an applicant's merit and fitness for the position.

79 (f) Hours Restrictions. -- An individual provisionally appointed to a snow and ice removal  
80 position pursuant to this section shall not work in excess of 1560 hours in a single year for the  
81 Division of Highways until said individual is converted into a permanent, classified-nonexempt  
82 employee under the provisions set forth in subsection (d) of this section.

NOTE: The purpose of this bill is to require the Commissioner of Highways to contract with private providers or contractors for emergency maintenance operations if the Division of Highways cannot complete operations in a timely manner; to create a provisional appointment procedure for Division of Highway positions necessary for snow and ice removal from roadways; to authorize the Division of Highways to solicit applications and appoint qualified applicants to provisional snow and ice removal positions pending permanent appointment; to exempt provisional appointments for snow and ice removal services from State Personnel Board Procedures and oversight; to create a process by which individual provisional snow and ice removal appointees shall be converted to permanent employees within the classified service system once certain requirements are met; and to require the Division of Highways to follow ethical guidelines and certain practices when posting provisional appointments and making provisional appointments to snow and ice removal positions.

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