

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4561**

(BY DELEGATES KURCABA, STATLER, UPSON,  
HOUSEHOLDER, MCGEEHAN, AZINGER, OVERINGTON,  
ELLINGTON, FAST, FOSTER AND GEARHEART)

[Originating in the Committee on Government

Organization; February 26, 2016.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §29-6-4a, relating to requiring the Commissioner of the Division of Highways  
3 and the Director of the Division of Personnel to collaborate to develop a special hiring  
4 procedure for hourly personnel positions in the Division of Highways; establishing  
5 requirements for the special hiring procedure; exempting the Division of Highways and the  
6 division of Personnel from classified service hiring procedures upon implementation of the  
7 special hiring process; exceptions; establishing reporting requirements; and requiring  
8 emergency and legislative rulemaking.

*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 §29-6-4a, 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 purpose of this section is to allow the Division of Highways to appoint qualified  
3 applicants to vacant hourly personnel positions in the division in a timely manner, in order to  
4 ensure that the Division of Highways maintains an adequate workforce to maintain safe roadways  
5 for the citizens of West Virginia.

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

7 (1) “Commissioner” means the Commissioner of the Division of Highways or his or her  
8 designee;

9 (2) “Director” means the Director of the Division of Personnel or his or her designee; and

10 (3) “Division” means the Division of Highways.

11 (c) Development of Special Hiring Procedure; Requirements.—

12 (1) The commissioner and the director shall collaborate to develop a special merit based  
13 application and appointment procedure for the employment of individuals to fill hourly personnel  
14 positions in the division.

15           (2) The special application and appointment procedure required by this section shall go  
16 into effect on January 1, 2017, and shall meet the following requirements:

17           (A) The procedure may not require the division to post a position to be filled internally for  
18 more than one week before selecting an applicant for a position; and for those positions to be  
19 filled with a candidate from outside of the division, for not more than fourteen calendar days.

20           (B) The procedure will require the division to begin the process to fill the position in a timely  
21 manner to allow a new employee of the division to begin working for the division no later than four  
22 weeks after the division's decision to offer a position to the new employee based upon its  
23 determination that the applicant meets minimum qualifications and is otherwise eligible for the  
24 position.

25           (C) The procedure shall provide that the Division of Personnel may not change the pay  
26 grades or pay grade equivalents, of any employee classification utilized by the Division of  
27 Highways without written approval of the Commissioner of the Division of Highways;

28           (D) The procedure shall authorize the Division of Highways to create and implement  
29 programs for its employees to advance within the established pay ranges of their employment  
30 classifications, including, but not limited to, approval authority and administration of the  
31 Transportation Worker Apprenticeship Program;

32           (E) The procedure shall provide that the Division of Highways has sole approval authority  
33 regarding employment transactions and that the Division of Personnel shall review employment  
34 transactions to ensure that the transactions comply with applicable state and federal law and  
35 regulation;

36           (F) The procedure shall provide that the Division of Highways is authorized to process  
37 multiple leaves of absence simultaneously, within the confines of the Oasis system; and

38           (G) The procedure shall provide the Division of Highways the flexibility to utilize any and  
39 all vacant position numbers when posting to fill a vacancy and to post vacant positions utilizing

40 multiple classifications when the Commissioner determines it to be necessary and in the best  
41 interest of the agency.

42 (H) The procedure shall provide that a vacancy created when an employee goes on  
43 terminal leave shall be posted upon receipt of the notice that the employee has begun such leave.

44 (d) Exemption from Regular Application and Appointment Requirements.—

45 (1) Effective January 1, 2017, the division and the director shall follow the special  
46 procedure developed pursuant to subsection (c) of this section when seeking applications and  
47 making appointments to hourly personnel positions within the division.

48 (2) When seeking applications and making appointments pursuant to the special  
49 procedure required by subsection (c) of this section, neither the division nor the director is required  
50 to comply with division of personnel procedures for seeking applications and making  
51 appointments to classified service positions as provided in this article or in any other provision of  
52 this code, including those procedures promulgated by legislative rules, subject however to the  
53 following exceptions:

54 (A) This section does not exempt the director or the division from the requirements of  
55 sections twenty and twenty-one of this article, including the prohibition against favoritism,  
56 discrimination or otherwise unethical practices related to appointment; and

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

60 (e) On or before October 1, 2016, the commissioner shall report to the Joint Committee  
61 on Government and Finance regarding the division's progress toward compliance with the  
62 requirements of this section.

63 (f) The commissioner and the director shall jointly propose emergency rules pursuant to  
64 the provisions of section fifteen, article three, chapter twenty-nine-a of this code and shall also

65 propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of  
66 this code as may be necessary to implement and comply with the provisions of this section.  
67 (g) The provisions of this section shall apply notwithstanding any other provision of this  
68 article to the contrary.

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