
WEST VIRGINIA CODE CHAPTER 11B

ARTICLE 1

WV Legislature

§11B-1-1. Department of Revenue; Office of Secretary of Revenue; Director of Budget; federal funds.

(a) The Department of Revenue and the office of secretary of revenue are continued in the executive branch of state government. Wherever in this code the words “office of secretary of tax and revenue” or “secretary of tax and revenue” are used, such words shall mean the office of secretary of revenue or the secretary of revenue. Wherever in this code the words “department of tax and revenue” are used, such words shall mean the Department of Revenue.

(b) The secretary of revenue shall be the chief executive officer of the department and director of the budget. The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(c) The Department of Revenue is hereby authorized to receive federal funds for deposit in compliance with §12-2-2 of this code and for expenditure only upon appropriation by the Legislature of this state and in accordance with §4-11-1 *et seq.* of this code.

(d) The secretary shall serve at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in §6-7-2a of this code.

§11B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of finance and revenue.

(a) There shall be in the Department of Revenue the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities which are incorporated in and shall be administered as part of the Department of Revenue:

(1) The Alcohol Beverage Control Commissioner provided for in article sixteen, chapter eleven of this code and article one, chapter sixty of this code;

(2) The Division of Banking provided for in article two, chapter thirty-one-a of this code;

(3) The board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(4) The state budget office, heretofore known as the budget section of the Finance Division, Department of Administration, previously provided for in article two, chapter five-a of this code and now provided for in article two of this chapter;

(5) The agency of Insurance Commissioner provided for in article two, chapter thirty-three of this code;

(6) The lending and credit rate board provided for in chapter forty-seven-a of this code;

(7) The Lottery Commission and the position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(8) The Municipal Bond Commission provided for in article three, chapter thirteen of this code;

(9) The office of tax appeals provided for in article ten-a, chapter eleven of this code;

(10) The state athletic commission provided for in article five-a, chapter twenty-nine of this code;

(11) The Tax Division provided for in article one, chapter eleven of this code; and

(12) The West Virginia Racing Commission provided for in article twenty-three, chapter nineteen of this code.

(b) The department shall also include any other agency, board, commission, division, office or unit subsequently incorporated in the department by the Legislature.

§11B-1-3. Powers and duties of secretary, administrators, division heads and employees.

- (a) The secretary shall have control and supervision of the Department of Revenue and shall be responsible for the work of each of its employees.
- (b) The secretary shall have the power and authority specified in this article and article two, chapter five-f of this code and as specified elsewhere in this code, whether heretofore or hereinafter enacted by the Legislature and whether the code provision refers to the secretary of revenue or to the secretary of tax and revenue.
- (c) The secretary has authority to assess agencies, boards, commissions, divisions and offices in the Department of Revenue for the payment of expenses of the office of the secretary.
- (d) The secretary shall have plenary power and authority within and for the department to employ professional staff, including, but not limited to, certified public accountants, economists and attorneys, assistants and other employees as necessary for the efficient operation of the department.
- (e) The secretary and administrators, division heads and other employees of the department shall perform the duties specified in this code for their respective offices or positions and shall also perform other duties as the Governor prescribes.

§11B-1-4. Reports by secretary.

The secretary shall make an annual report to the Governor concerning the conduct of the department and the administration of the budget. The secretary shall also make other reports as the Governor may require. Copies of any such reports shall be submitted to the Legislature in the manner required by §5-1-20 of this code.

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§11B-1-5. Delegation of powers and duties by secretary.

The secretary may delegate powers and duties vested in the secretary to his or her assistants and employees, but the secretary shall be responsible for all official acts of the department.

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§11B-1-6. Confidentiality of information.

(a) Information provided to secretary under expectation of confidentiality. -- Information that would be confidential under the laws of this state when provided to a division, agency, board, commission or office within the Department of Revenue shall be confidential when that information is provided to the secretary of the Department of Revenue or to an employee in the office of the secretary. The confidential information may be disclosed only: (1) To the applicable agency, board, commission or division of the department to which the information relates; or (2) in the manner authorized by provisions of this code applicable to that agency, board, commission or division. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.

(b) Interdepartmental communication of confidential information. -- Notwithstanding any provision of this code to the contrary, information that by statute is confidential in the possession of any division, agency, board, commission or office of the Department of Revenue may be disclosed to the secretary, or an employee in the office of the secretary, who must safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is confidential: Provided, That nothing contained in this section shall be construed to require the disclosure to the secretary or to an employee in the office of the secretary of individually identifiable health care or other information that, under federal law, may not be disclosed by the administrator without subjecting the administrator or the agency, board, commission, division or office to sanctions or other penalties by the United States or any agency thereof. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.

§11B-1-7. Right of appeal from interference with functioning of agency.

Upon occasion of a showing that the application of the authority vested under the provisions of this article may interfere with the successful functioning of any department, institution or agency of the government, that department, institution or agency has the right of appeal to the Governor for review of the case and the decision or conclusion of the Governor shall control in appeals.

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

(a) Legislative findings and intent. —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Exemption from regular application and appointment requirements. — When seeking applications or making appointments pursuant to the special procedure authorized by subsection (c) of this section, the division is not required to comply with Division of Personnel procedures for seeking applications and making appointments to classified service positions as provided by the provisions of article six, chapter twenty-nine of this code or in any other provision of this code, including those procedures promulgated in procedural or legislative rules promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code, except that this section does not exempt the division from provisions of this code, prohibiting nepotism, favoritism, discrimination or unethical practices related to appointment, or the public employee grievance system.

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

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

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