WEST VIRGINIA CODE CHAPTER 17 ARTICLE 2A

WV Legislature

§17-2A-1. Duties of state road commissioner transferred to Division of Highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

The office of state road commissioner heretofore existing is hereby continued in all respects as heretofore constituted, but is hereby designated as the West Virginia Division of Highways. All duties and responsibilities heretofore imposed upon the state road commissioner and the powers exercised by him are hereby transferred to the West Virginia Division of Highways and such duties and responsibilities shall be performed by said division and the powers may be exercised thereby through the West Virginia commissioner of highways who shall be the chief executive officer of the division.

There is hereby continued the office of West Virginia commissioner of highways who shall be appointed by the Governor, by and with the advice and consent of the Senate, subject to the provisions of section two-a, article seven, chapter six of this code.

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§17-2A-1a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§17-2A-2. Qualifications; office requirements; devotion of full time to duties; supervisory authority; oath; bond.

The commissioner shall be a person who is experienced in highway planning, finance, construction, maintenance, management and supervision qualifying him or her for the duties of his or her office; shall devote his or her full time and attention to his or her official duties and responsibilities; shall be a resident of West Virginia; shall maintain his or her office headquarters at the state capital; shall be the chief executive officer of the commission and, subject to other provisions of law, shall have direct and full control, management and supervision of the entire state road program and system; and shall, prior to assumption of the duties of his or her office, take and subscribe to the oath prescribed by the Constitution and execute a bond, with surety approved by the commission, in the penal sum of $25,000, which executed oath and bond shall be filed with the Secretary of State. Premiums on the commissioner's bond shall be paid from commission funds.

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§17-2A-3. Salary and expenses.

The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code. He or she shall be allowed and paid necessary traveling expenses incident to the performance of his or her duties. Statements covering such expenses shall be itemized and verified by the commissioner.

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§17-2A-4. Selection, organization, classification, etc., of personnel; business manager and chief engineer assistants; employees' bonds.

The commissioner shall be in charge of and responsible for the selection, employment and effective organization of all commission personnel for the entire state road and highway program. He may establish such divisions, sections and other functional and organizational units within the commission as may be necessary and practical in the full and effective discharge of the duties and responsibilities of his office. Except as otherwise provided by law, all commission personnel shall be classified pursuant to the job classification system and shall be paid pursuant to the salary scale established by the commissioner.

The commissioner shall select and employ a business manager assistant and one or more chief engineer assistants who shall be registered professional engineers, and shall establish such other offices, activities, divisions, sections and organizational units as may be necessary and practical. The business manager assistant shall be in charge of and responsible for matters of finance and such other functions as may be assigned to him from time to time by the commissioner. The chief engineer assistant or, if the commissioner has selected and employed more than one chief engineer assistant, the chief engineer assistants shall be in charge of and responsible for planning, equipment, materials, construction, maintenance, and such other functions as may be designated by the commissioner as well as such other functions as may from time to time be assigned to such chief engineer assistant or assistants by the commissioner.

The commissioner shall require every employee who collects fees or handles funds or who has custody or control of equipment or supplies belonging to the state to give bond, with such sureties and in such penal sum as may be approved by the commissioner, for the faithful discharge of each such employee's duties and his accounting for all such fees, funds, equipment and supplies coming into his hands or under his custody or control. All such bonds, when approved by the commissioner, shall be filed in the office of the Secretary of State. Premiums on all such bonds shall be paid from commission funds.

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§17-2A-4a. Payment of reasonable traveling expenses of prospective employees and moving expenses of new and transferred employees.

In addition to the other powers given and assigned to him in this chapter, the commissioner may authorize the payment of:

(1) The reasonable traveling expenses incurred by any person he requests to visit his office to be interviewed concerning the possible employment of such person by the state road commission;

(2) All or part of the reasonable expense incurred by a person newly employed by the commission in moving his household furniture, effects and immediate family to his place of employment;

(3) All or part of the reasonable expense incurred by a technical or supervisory employee of the commission, but excluding all employees at the county level, in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months.

The expenditures for such payments shall be made from the state road fund, and shall be a cost of administration of said commission.

WV Legislature

§17-2A-4b. Scholarships for training highway personnel; other training programs; notes for money advanced; payment or cancellation of notes.

The Legislature hereby declares that there is a wide and continuing need for trained personnel in the Division of Highways of this state and that the scholarships herein provided will aid the Division of Highways in attracting and holding competent employees.

The commissioner of highways is empowered to enter into contracts for training programs with state colleges, universities and other training sources and to award scholarships to competent persons, whether presently employed by the Division of Highways or not, for the purpose of enabling and encouraging such persons to attend a college or university to pursue the course of study as may be approved by the commissioner of highways, but the number of persons holding such scholarships at any one time shall not exceed fifteen. Each scholarship shall carry a stipend in an amount fixed by the commissioner of highways not in excess of $12,000 in the aggregate. The necessary expenditures for the scholarships shall be made from the funds available to the Division of Highways. The recipient of a scholarship shall execute notes and shall deliver said notes to the commissioner of highways. Each note shall be in the amount of the sum received from the state road fund and shall be payable on demand to the Division of Highways. The commissioner of highways shall hold said notes and if, for any reason, except death or physical or mental disability, or being drafted into the armed services, the recipient of a scholarship fails successfully to complete the course of study for which the scholarship was granted or if after the completion of the prescribed course of study does not continue or become an employee of the Division of Highways, or ceases to be an employee before all the notes have been paid or canceled, the commissioner of highways shall make demand for payment of all of the unpaid and uncanceled notes and shall promptly enforce collection thereon and shall deposit the sums so collected thereon in the state road fund. The commissioner of highways is authorized to credit the oldest outstanding notes in the sum of $1,500 every six months that the recipient of the scholarship is employed by the Division of Highways after completing the course of study for which the scholarship was granted. The commissioner of highways shall have the power and authority to make all necessary rules to carry this section into effect.

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§17-2A-5. Disqualifications of commissioner and personnel; vacation of position.

No person, while in the employ of or holding any official relation to any person, firm or corporation selling or furnishing materials entering into the construction, reconstruction, repair or maintenance of any state roads or highways, or any part thereof, or who is pecuniarily interested therein as a stockholder or otherwise, shall be appointed commissioner or be otherwise employed in any capacity or employment by the commission or commissioner. Any such interest in or connection with any such person, firm or corporation, acquired by the commissioner or any such employee of the commission or commissioner subsequent to his appointment or employment, shall immediately disqualify such person from holding the office of commissioner or any other position or employment by the commission or commissioner and such office or position of employment, as the case may be, shall be immediately vacated.

No person may be appointed as commissioner or employed in any other capacity or employment by the commission or commissioner when he is a candidate for or holds any public office or is a member of any political party committee. In the event the commissioner or any employee of the commission or commissioner becomes a candidate for or holds any public office or becomes a member of any political party committee, his office as commissioner or position as employee, as the case may be, shall be immediately vacated.

WV Legislature

§17-2A-6. Accounting and auditing; financial reports.

The commissioner, by and through his business manager assistant, shall centralize, standardize and integrate the budget, accounting and auditing services of the entire state road and highway program. Whenever there is provided by law a uniform system of accounting and auditing and policies and practices relating thereto for all state officials, departments and agencies, such uniform system shall be adopted by the commissioner. Until such system, policies and practices are formulated and prescribed, the commissioner shall establish his own system, policies and practices for all accounting and reporting services.

All commission accounting and auditing services shall be on the fiscal year basis. The commissioner shall prepare an annual financial report covering all receipts and disbursements for each fiscal year and shall deliver such report to the commission on or before December 1, next succeeding the end of the fiscal year.

The commissioner shall report quarterly to the commission on finances, personnel and other aspects and phases of the road program and system.

WV Legislature

§17-2A-6a. Independent performance audit of the Division of Highways.

(a) Beginning May 1, 2015, the Division of Highways shall provide access to and make available all of the Division's books, accounts, records and any other information requested by the independent qualified firm that may be selected by the Joint Committee on Government and Finance to conduct a performance audit of the Division of Highways and any one or more of the individual district within the state road system for the preceding three fiscal years, as determined by the Joint Committee on Government and Finance.

(b) The independent qualified firm selected to conduct the performance audit shall be selected by the Legislative Auditor under the oversight of the Joint Committee on Government and Finance on a competitive bid based upon price and qualifications. The performance audit shall be conducted in accordance with the generally accepted government auditing standards. The audit may include, but not be limited to examination of areas of inefficiency, best practices, the appropriateness of staffing across functions and locations, vehicles allocated within the agency, compensation levels including overtime and relation to employee turnover, procurement practices, existing or recommended system of performance benchmarks, organizational structure, and internal operating or management policies.

(c) The independent qualified firm shall submit the final report of the audit to the Joint Committee on Government and Finance, with a copy to the Governor, on or before December 31, 2015. The Joint Committee on Government and Finance may authorize extension of the reporting requirement or expansion of the terms of the audit. The Joint Committee on Government and Finance shall pay the costs associated with the performance audit prescribed by this section.

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§17-2A-6b. Country roads accountability and transparency.

(a) The Legislature finds that taxpayers should be able to easily access the details of how the state is spending their tax dollars to build and repair state and public roads. The taxpayers should also be able to easily access and compare the budgeted moneys and the performance results that are achieved for those expenditures. It is the intent of the Legislature, therefore, to direct the Auditor to create and maintain a searchable website detailing where, how much, and from what source the taxpayer moneys in state government are expended for state and public roads.

(b) No later than July 1, 2020, the Auditor shall develop and make publicly available a searchable website containing, at a minimum, the following information for a given fiscal year, and the three immediately preceding fiscal years:

(1) The project number or name for each state and public road in which moneys have been expended to build or repair or in which funding has been directed;

(2) The county location for each such project;

(3) The funding source for a given funding action or expenditure;

(4) The budget program or activity related to a given funding action or expenditure;

(5) The name and the address, principal location or residence of the recipients of a given funding action or expenditure; and

(6) Additional information as to the funding action or expenditure the Auditor considers valuable for the public.

(c) For the purposes of this section:

"Auditor" means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated or approved by the State Auditor to perform the service;

"Funding action or expenditure" includes details on the type of spending (grant, contract, appropriations, etc.). This includes, but is not limited to, tax exemptions, tax credits, or any expenditure from any civil contingency or similar fund. Where possible, a hyperlink to the actual grants or contracts shall be provided: *Provided,* That any private or confidential information is redacted: *Provided,* That any private or confidential information contained in the contract shall be redacted;

"Funding source" means the state account from which the funding action or expenditure is appropriated;

"Recipients" means any individual, person, corporation, association, union, limited liability corporation, limited liability partnership, legal business entity including nonprofit

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organizations, grantees, contractors, or any county, municipal or other local government entity that directly receives the benefit of a funding action or expenditure;

“Searchable website” means a website that allows the public at no cost to search and aggregate information regarding the state’s budget and spending.

(d) The searchable website shall be updated periodically as new data becomes available and is submitted by the commissioner to the Auditor. The commissioner shall provide to the Auditor, in a format specified by the Auditor, all the data that is required to be included in the searchable website no later than 30 days after the data becomes available to the agency. The Auditor shall provide guidance and specifications to the commissioner to promote compliance with this section.

(e) Nothing in this section may be construed to require the commissioner to provide information in a form that is not already available in the Division of Highways’ accounting system: *Provided*, That when funding action or expenditure is not available separately for a road, the commissioner shall provide available information by county.

(f) The Auditor shall annually provide an update to the Joint Committee on Government and Finance as to the status of the website and shall make known to the Joint Committee and the public any failure by the commissioner to timely submit to the Auditor appropriate and requested information.

WV Legislature

§17-2A-7. Legal assistance.

(a) Except as provided in subsection (b) of this section, the commissioner shall utilize the Attorney General for all legal assistance and services as provided by law.

(b) The commissioner may:

(1) Employ a competent legal staff adequate for the ordinary legal services required by him or her and shall provide therefor such quarters, equipment, facilities, services and stenographic and other personnel as may be necessary: Provided, That for purposes of this subdivision, “ordinary legal services” does not include the retention or hiring of outside legal counsel; and

(2) Employ such additional legal counsel as he or she deems necessary upon a reasonable fee basis to perform legal services in acquiring, by right of eminent domain or otherwise, property, or an estate, right or interest therein.

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§17-2A-8. Powers, duties, and responsibilities of commissioner.

In addition to all other duties, powers, and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair, and maintenance of state roads and highways: *Provided*, That the commissioner shall implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

(3) Conduct investigations and experiments, hold hearings and public meetings, and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings, and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in the name of the division, by lease, grant, right of eminent domain, or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the State Capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the state of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which is held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies, and all other matters of interstate or national interest;

(9) Classify and reclassify, locate, and relocate, expressway, trunkline, feeder, and state local service roads, and designate by number the routes within the state road system;

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(10) Create, extend, or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway found necessary and proper;

(11) Exercise jurisdiction, control, supervision, and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate, and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner. Any petition, motion, notice, decision, and order related to the discontinuance, vacating, or closing of any road or highway or part thereof shall be posted by the commissioner on the division's website available for review by the public. The division shall make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction, or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges, and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement, or maintenance;

(19) Acquire, establish, construct, maintain, and operate, in the name of the division, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the Public Service Commission or any other appropriate governmental agency relating to freight rates, car service, and movement of road materials

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and equipment;

(23) Invoke any appropriate legal or equitable remedies, subject to §17-2A-7 of this code, to enforce his or her orders, to compel compliance with requirements of law, and to protect and preserve the state road and highway system or any part of the system;

(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program, and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement, and maintenance of the roads;

(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau, or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement, and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the division;

(31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials Revolving Fund, and an Equipment Revolving Fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities, and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance, and supervision of highways, roads, streets, and other travel ways when and to the extent determined by the division to be expedient and practical;

(33) Report, as provided by law, to the Governor and the Legislature;

(34) Purchase materials, supplies, and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the division in the state road program by

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transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade, or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of division personnel, and fiscal and financial affairs of the division and hold hearings and make findings thereon or on any other matters within the jurisdiction of the division;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the Division of Highways after May 1, 1999, that have been authorized by the provisions of §17-17A-5b of this code;

(39) Take actions necessary to alleviate any conditions as the Governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the Division of Highways;

(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law; and

(41) Design and place signs and markers that do not jeopardize federal highway funding, including, but not limited to, warning signs that advise of unimproved or primitive roads and urge high ground clearance four-wheel drive vehicle use.

WV Legislature

§17-2A-8a. Authority to employ expert witnesses in eminent domain proceedings; compensation.

Notwithstanding any law to the contrary, the commissioner may employ as witnesses to testify in eminent domain proceedings such persons who are qualified to give competent testimony as to the value of the property, or estate, right or interest therein, being condemned in an eminent domain proceeding, as he deems necessary. Each such person so employed shall receive for his services the sum agreed upon in a written contract signed by the commissioner and such person. The sum contracted to be paid, however, shall not be made contingent upon the outcome of the action or hearing in which the competent testimony is to be given.

WV Legislature

§17-2A-8b. Authority to provide emergency road service.

In addition to the other powers given and assigned to him in this chapter, where an emergency exists, the commissioner may authorize the use of state road commission vehicles to provide towing service to vehicles stranded on any highway in this state, or may provide a sufficient quantity of gasoline or other fuel for the vehicle to propel it to a point where such fuel may be purchased.

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§17-2A-8c. Use of public carriage for designated employees.

In addition to the other powers given and assigned to him in this chapter, the commissioner of highways shall have authority to use, and permit and allow or disallow his designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: Provided, That such usage is subject to the supervision of such official and is directly connected with and required by the nature and in the performance of such official's or designated employee's duties and responsibilities.

WV Legislature

§17-2A-8d. Reimbursement for volunteer fire departments.

(a) In addition to the other powers given and assigned to him or her in this chapter, the Commissioner of the Division of Highways may enter into reimbursement agreements, based upon reasonable actual costs incurred, with volunteer or part-volunteer fire departments for services provided by volunteer or part-volunteer fire departments relating to tree or debris removal from state highways and rights-of-way when the commissioner requests such services.

(b) A volunteer or part-volunteer fire department may be reimbursed without a prior request by the commissioner when the traveled way of a state highway is obstructed by a fallen tree or other debris and the volunteer or part-volunteer fire department is the first responder: Provided, That the volunteer or part-volunteer fire department subsequently enters into a reimbursement agreement with the commissioner to recoup only the costs actually incurred to clear the traveled way of the state highway to permit the public to safely travel upon it.

(c) The commissioner shall retain authority to properly remove and dispose of any cleared trees, debris, or other obstructions cleared from the traveled way by a volunteer or part-volunteer fire department, and the commissioner shall not reimburse a volunteer or part-volunteer fire department for any final disposal of any cleared debris or obstruction.

(d) The commissioner shall not reimburse a volunteer or part-volunteer fire department for services contracted out by the volunteer or part-volunteer fire department.

(e) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to effectuate the purposes of the section. Any rule promulgated pursuant to this section shall include provisions establishing minimum reporting, auditing, and other necessary documentation requirements to approve reimbursement requests submitted to the commissioner.

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§17-2A-9. Persons required to assist commissioner.

At the request of the commissioner, the dean of the college of engineering of West Virginia University, the director of the experiment station of the university and the heads of the several departments of science shall render to the commissioner all necessary aid and assistance in the performance of his duties, as the requirements of their respective offices and positions will permit, without extra charge or compensation for the service.

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§17-2A-10. Production of documentary evidence and testimony at hearings, etc.; contempt for disobedience; self-incrimination.

In any hearing, investigation or proceeding conducted by or before the commission or commissioner, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing and summons may be issued therefor by the commissioner or any member of the commission. In case of disobedience to a summons or other process so issued, the commissioner, a member of the commission or any party to the proceedings may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents. And upon proper showing, such court shall issue an order requiring such persons to appear before the commissioner or commission, as the case may be, and produce all books and papers and give evidence touching the matter in question. Any person failing to obey such order may be punished by such court as for contempt. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

WV Legislature

§17-2A-11. Road maps; digital road map.

(a) The commissioner shall prepare and currently maintain a master road and highway map which will show all of the state roads and highways located, created and classified as provided by law; the mileage of roads and highways; the status of improvements; and travel conditions when practical. The commissioner may make economical reproductions of the map for official use and public information purposes, including a digital road map. The goal is for the maps to be computerized and searchable by the public to map routes for travel throughout the state.

(b) The digital road map shall indicate whether public roads are unpaved and unimproved, unpaved and improved, unlined and paved, or lined and paved. The digital road map shall further indicate the types of vehicles that may use each road, including full-size vehicles and off-highway vehicles, such as all-terrain vehicles, utility-terrain vehicles, motorcycles and off-road vehicles.

WV Legislature

§17-2A-12. Traffic control factors; parking regulations.

In the interest of safety and the convenience, coordination and control of pedestrian and vehicular traffic, the commission may from time to time cause surveys and findings to be made as to the necessity and propriety of setback lines, traffic islands, curb separations, entrance approaches, sidewalks and other traffic control factors. The commission may, pursuant to such surveys and findings, promulgate and enforce reasonable rules and regulations relating to and controlling the location, construction and maintenance of all such traffic control factors, but shall not in any case unduly interfere with any abutting property owner's entrance or access rights or approaches to any road or highway unless with the consent and voluntary action of such abutting property owner or through appropriate proceedings in court in the exercise of the right of eminent domain for determination of the lawful rights of the respective parties and the damages, if any, to be assessed. The limitations of this section on the commission's authority to regulate entrance and access to roads and highways shall not apply to freeways as defined in section thirty-nine of article four of this chapter.

The commission may regulate and, when the safety and convenience of the traveling public so require, may prohibit parking of vehicles on and along roads and highways and the rights-of-way thereof.

WV Legislature

§17-2A-13. Purchase or acquisition of materials, supplies and equipment.

All materials, supplies and equipment required for the state road program and system shall be purchased and acquired by the commissioner through the department of purchases, except as otherwise provided by law. The director of purchases shall adopt rules and regulations governing and controlling acquisitions and purchases in accordance with accepted business practices so that no persons shall be precluded from participating and making sales thereof to the commission; shall establish and prescribe specifications, in all proper cases, for materials, supplies and equipment to be purchased; shall adopt and prescribe such purchase order, requisition or other forms as may be required; shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted business methods and practices, as may be practicable in accordance with general law; shall determine whether to advertise for bids, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted methods and practices; and shall post in a public place in the offices of the commission and the department of purchases, available to the public during all business hours, notices of all acquisitions and purchases to be made, at least two weeks prior to making such purchases.

All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds.

The director of purchases shall make available the facilities and services of his department to the commissioner in the purchase and acquisition of materials, supplies and equipment and shall cooperate with the commissioner in all such purchases and acquisitions upon request of the commissioner. The actual expenses incurred by the director of purchases in all such cases shall be paid by the commissioner.

WV Legislature

§17-2A-14. Disposition of surplus, etc., equipment and materials; inventories.

The commissioner shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The commissioner shall adopt and promulgate rules and regulations governing and controlling the disposition of all such equipment, supplies and materials. He shall advertise, by newspaper publication or otherwise, the availability or sales of such disposable equipment, supplies and materials and may sell same, in whole or in part, at public auction, or may transfer, exchange or trade same (if by exchange or trade, then without advertising), in whole or in part, as sound business practices may warrant under existing circumstances and conditions. The commissioner shall inventory all such disposable equipment, supplies and materials from time to time as quantity and stocks may warrant but shall make a complete semiannual inventory thereof as of the thirty-first day of March and September 30, of each year. He may report such inventories to the director of purchases whose services and facilities shall be available to the commissioner in making advantageous disposition of any part or all of such disposable equipment, supplies and materials. Such inventories shall briefly describe the disposable items, the date of purchase thereof, the vendor to the commissioner, the purchase price paid therefor and the commissioner's order number authorizing disposition thereof and shall indicate briefly the reason said items are no longer needed or can no longer be used by the commission. All such inventories shall be kept as public records open to public inspection at the office of the commissioner for a period of five years and may thereafter be destroyed.

WV Legislature

§17-2A-15. Other code provisions relating to purchasing not controlling; exceptions.

(a) The provisions of §5A-3-1 *et seq*. of this code shall not control or govern the purchase, acquisition, or disposition of any equipment, materials, or supplies by the commissioner, except as provided in §17-2A-13 and §17-2A-14 of this code. The commissioner may, in his or her discretion, resort to applicable provisions of §5A-3-1 *et seq*. of this code and to rules and practices of the Purchasing Division within the Department of Administration in purchasing, acquiring, or disposing of equipment, supplies, and materials.

(b) The commissioner may accept ownership of equipment if the equipment has been rented or leased by the division, maintained by the division, and the equipment vendor voluntarily relinquishes ownership of the equipment to the division. Any equipment acquired pursuant to this subsection shall be included in the division's inventory and the division's equipment and vehicle reports. Prior to any termination of a rental or lease agreement with an assumption of ownership of equipment, the commissioner shall notify the Director of the Purchasing Division within the Department of Administration.

WV Legislature

§17-2A-16. Prequalification disclosure by vendors; register of vendors.

Every person, firm or corporation selling or offering to sell to the commissioner of the West Virginia department of highways, upon competitive bids or otherwise, any materials, supplies or equipment shall comply with all of the provisions of section fourteen-a, article three, chapter five-a of this code and shall file with the director of the Purchasing Division of the State of West Virginia the affidavit required therein.

Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell commodities to the commissioner as hereinabove set forth.

WV Legislature

§17-2A-17. Acquisition of property for state road purposes; "state road purposes" defined.

In addition to all other powers given and assigned to the commissioner in this chapter, the commissioner may acquire, either temporarily or permanently, in the name of the Division of Highways all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, deemed by the commissioner to be necessary for present or presently foreseeable future state road purposes by gift, lease, grant, bequest, devise, agreement, purchase, exchange, right of eminent domain, or other lawful means. Real property may be acquired in fee simple or in any lesser estate or interest therein, except in the case of a public road, only the right-of-way shall be acquired. Acquisition of such personal property shall be subject to the provisions of §17-2A-13 and §17-2A-15 of this code. The acquisition of all such real and personal property is hereby declared to be a cost of highway construction. Nothing in this section restricts or relinquishes any right the state or any agency thereof now or hereafter possesses or may exercise by virtue of the police power or other lawful authority.

As used in this article, "state road purposes" shall include provision for, but shall not be limited to, the following:

(a) Constructing, establishing, laying out, widening, enlarging, extending, straightening, reconstructing, relocating, grading, altering, improving, and maintaining state roads;

(b) Rights-of-way for state roads, including those needed for such roads within municipalities, such rights-of-way to be to such width and depth as deemed necessary for the project by the commissioner and shall include all material therein;

(c) Adequate drainage of state roads;

(d) Controlled-access facilities, as defined in §17-4-39 of this code, including existing and vested rights of access, air, view and light, whether privately or publicly owned, and local service roads to controlled-access facilities;

(e) Broadcasting stations, weighing stations, shops, equipment sheds, office buildings, storage buildings and yards, snow fences, road maintenance, or construction sites;

(f) Road-building material storage sites, quarry sites, gravel pits, sites for the acquisition or manufacture of road-building materials including borrow pits, stockpile sites, waste-material sites and access roads to any such sites or places;

(g) The culture and support of trees which benefit any state road by aiding in the maintenance and preservation of the road;

(h) Landscape and roadside development, and maintenance thereof, within any state road right-of-way, and the acquisition and maintenance of lands and interests in lands for the restoration, preservation, and enhancement of places of scenic beauty, and other objects of

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attraction or scenic value adjacent to or near any state road, and the acquisition, development, and maintenance of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary for the accommodation of the traveling public, within, adjacent to, or near the right-of-way of any road within the state road system;

(i) Development and maintenance of parking places, auto camps, camp sites, roadside parks, historic roadside markers and sites, forest or timbered areas, or other places of attraction and scenic value which are adjacent to or near any state road and which in the judgment of the commissioner are necessary for the convenience of the public and will contribute to the general welfare and pleasure of the motoring public or road users;

(j) Maintenance of an unobstructed view of any portion of any state road in order to provide for the safety of the traveling public;

(k) Erection and maintenance of markers, warning signs and traffic signals;

(l) Construction and maintenance on state roads of sidewalks and highway illumination;

(m) Elimination or prevention of hazardous or undesirable points of entry to state roads from adjacent property;

(n) Acquisition of property, or any interest or right therein, for the purpose of exchanging it for other property, or any interest or right therein, which the Division of Highways is authorized to acquire by the other provisions of this section: *Provided,* That such substitute property, or any interest or right therein, may be acquired by the commissioner by condemnation only if the following conditions are satisfied: (1) Monetary compensation would be substantially inadequate for the property, or interest or right therein, which the commissioner is authorized to acquire by the other provisions of this section; and (2) the Division of Highways has entered into a written agreement to exchange the substitute property, or the right or interest therein, for the property, or right or interest therein, which is needed for state road purposes, regardless of whether the person who has agreed to accept the exchange has the right to condemn the substitute property, or the right or interest therein; and

(o) Acquisition of real property, not needed for a state road, for the purpose of moving and relocating thereon a building or other structure or appurtenance which is situated on a lot or tract of land all or a portion of which is needed for a state road and which, after relocation, will be suitable for the purpose for which it was used prior to its being relocated: *Provided,* That such additional real property may be acquired by the commissioner by condemnation only if the following conditions are satisfied: (1) The building or other structure or appurtenance is of substantial value; (2) the real property on which it is to be relocated is not substantially improved and is adjacent to or near the location from which it is to be removed; (3) the owner of the real property needed for the state road has entered into a written agreement with the Division of Highways to accept in exchange the additional

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property with the relocated building or structure or appurtenance thereon; (4) substantial savings in expenditure of state road funds will result from condemning the additional property and relocating the building or structure or appurtenance rather than condemning the lot or tract, or the portion thereof, on which the building or other structure or appurtenance may be located; and (5) the real property with the relocated building or structure or appurtenance thereon will be relatively equal in value to the real property needed for the state road.

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§17-2A-17a. Acquisition of property for utility accommodation purposes; "utility" defined.

(a) The Legislature finds that it is in the public interest for utility facilities to be accommodated on the right-of-way of state highways when such use and occupancy of the highway right-of-way does not adversely affect highway or traffic safety or otherwise impair the highway or its aesthetic quality, and does not conflict with the provisions of federal, state, or local laws, legislative rules, or agency policies. Utilities provide essential services to the general public and, as a matter of sound economic public policy and law, utilities have used state road rights-of-way for transmitting and distributing their services. The accommodation of utility facilities on the rights-of-way of state highways serves an important public purpose by increasing public access to utility services.

(b) "Utility" means, for purposes of this chapter, any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, data, information, video services, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term "utility" also includes those similar facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use, or those facilities which are owned or leased by a local exchange carrier, as defined by 150 CSR 6.

(c) In addition to all other powers given and assigned to the commissioner in this chapter, the commissioner may acquire, either temporarily or permanently, in the name of the division, and adjacent to public roadways or highways, all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, determined by the commissioner to be necessary for present or presently foreseeable future utility accommodation purposes.

(d) Notwithstanding any provision of this article to the contrary, the commissioner may lease real property held by the division or any interest or right in the property, including airspace rights, if any, for the purpose of accommodating any utility providing telecommunications or broadband services that has requested a lease if the commissioner finds, in his or her sole discretion, that entering into the lease agreement with such utility is in the public interest. The execution and governance of such accommodation leases are subject to the following:

(1) The term of any accommodation lease authorized by this section may not exceed 30 years;

(2) Neither competitive bids nor public solicitations are required prior to entering into a utility accommodation lease;

(3) Any utility accommodation lease shall require the utility to pay fair market value for the

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real property interest as determined by the commissioner: Provided, That because the social, environmental, and economic benefits from such use of state highway rights-of-way is of overwhelming value to the citizens of this state and is in the overall public interest, the division shall establish the fair market value for purposes of this article at $0 in monetary compensation: Provided, however, That a utility accommodation lease may include provisions that convey the state in-kind compensation if the lease includes multiple districts of the Division of Highways;

(4) For any utility which is not subject to the jurisdiction of the Public Service Commission, an accommodation lease may not contain any exclusivity provisions;

(5) The provisions of this subsection do not require any utility to lease any real property, or any interest or right in the property, from the commissioner; and

(6) The ownership, control, or any rights related to any in-kind compensation received by the division may, upon written approval of the Governor, be transferred or assigned to any other state agency.

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§17-2A-18. Acquisition of real property not needed for road purposes.

In connection with the acquisition of real property, or any interest or right therein, for state road purposes, the commissioner may acquire, by any lawful means other than by eminent domain or condemnation, an entire lot, block, or tract of real property, or any portion thereof, even though it is not needed for present or presently foreseeable future state road purposes, if uneconomic remnants would be left the owner or if severance or consequential damages to the remainder make acquisition of the additional property more economical to the state.

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§17-2A-19. Sale, exchange, or lease of real property.

(a) The Division of Highways, subject to the provisions of this section, may sell, exchange or lease real property, or any interest or right in the property, held by the Division of Highways. When the real property, or any interest or right in the property, is being held for future road purposes, it may be leased.

(b) This subsection applies to property held by the division, including a right-of-way, that was not acquired for use, or used, as a highway. When the real property, or any part of the property, or any interest or right in the property, is considered by the commissioner not necessary, or desirable for present or presently foreseeable future Division of Highways purposes, it may be exchanged for other real property, or any interest or right in the property, considered by the commissioner to be necessary or desirable for present or presently foreseeable future Division of Highways purposes, or it may be sold. In addition the division may exchange real property, or any part of the property, or any interest or right in the property, even though it may be necessary or desirable for present or presently foreseeable future Division of Highways purposes, if the exchange is made for other real property, or any interest or right in the property, in close proximity to the property which the commissioner considers of equal or superior useful value for present or presently foreseeable future Division of Highways purposes. In making exchanges the division may make allowances for differences in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures or appurtenances in connection with the exchange.

Every sale of real property, or any interest or right in the property or structure on the property, shall be at public auction in the county in which the real property, or the greater part of the property, is located, and the division shall advertise, by publication or otherwise, the time, place, and terms of the sale at least twenty days prior to the sale. The property shall be sold in the manner which will bring the highest and best price. The division may reject any or all bids received at the sale. The commissioner shall keep a record, open to public inspection, indicating the manner in which the real property, or any interest or right in the property or structure on the property, was publicly advertised for sale, the highest bid received and from whom, the person to whom sold, and payment received. The record shall be kept for a period of five years and may be destroyed after five years.

(c)(1) This subsection applies to property held by the division, including a right-of-way, that was acquired for use, or used, as a highway. The commissioner may transfer, sell or otherwise dispose of any right-of-way properties or any interest or right in the property, owned by or to be acquired by the Division of Highways which the commissioner in his or her sole discretion determines are not necessary or desirable for present or presently foreseeable future highway purpose by first offering the property to the principal abutting landowners without following the procedure for public auction provided in subsection (b) of this section.

(2) The commissioner shall propose rules for legislative approval in accordance with the

provisions of article three, chapter twenty-nine-a of this code governing and controlling the making of any leases or sales pursuant to the provisions of this subsection. The rules may provide for the giving of preferential treatment in making leases to the persons from whom the properties or rights or interests in the property were acquired, or their heirs or assigns and shall also provide for granting a right of first refusal to abutting landowners at fair market value in the sale of any real estate or any interest or right in the property, owned by the Division of Highways.

(3)(A) With respect to real property acquired subsequent to the year one thousand nine hundred seventy-three for use as a highway through voluntary real estate acquisition or exercise of the right of eminent domain, which real estate the commissioner has determined should be sold as not necessary for highways purposes, the commissioner shall give preferential treatment to an abutting landowner if it appears that:

(i) A principal abutting landowner is an individual from whom the real estate was acquired or his or her surviving spouse or descendant. In order to qualify for preferential treatment, the surviving spouse or descendant need not be a beneficiary of the individual. The terms used in this subdivision are as defined in section one, article one, chapter forty-two of this code; and

(ii) The primary use of the abutting property has not substantially changed since the time of the acquisition.

(B) When the provisions of paragraph (A) of this subdivision are met, the commissioner shall offer the property for sale to the principal abutting landowner at a cost equal to the amount paid by the Division of Highways in acquiring the real estate. If improvements on the property have been removed since the time of the acquisition, the cost shall be reduced by an amount attributable to the value of the improvements removed. The cost may be adjusted to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States department of labor since the time of disbursement of the funds.

(d) The commissioner may insert in any deed or conveyance, whether it involves an exchange, lease or sale, the conditions as are in the public interest and have been approved in advance by the Governor.

(e) All moneys received from the exchange, sale, or lease of real property, or any right or interest in the property, shall be paid into the State Treasury and credited to the state road fund.

(f) Notwithstanding the provisions of this section, property may not be transferred, sold or otherwise disposed of unless the commissioner finds that the right-of-way or other property has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties. This subsection does not apply to property that lies within six hundred feet of any dwelling house.

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§17-2A-19a. Transfer of airspace; procedures to be followed.

In any instance where the West Virginia department of highways has or shall hereafter acquire title to the airspace upon and over any highway or right-of-way for highway purposes, such department may, subject to the conditions herein, transfer such airspace or any part thereof to any person, firm or corporation by sale, lease or permit to use.

When such airspace or any part thereof is determined by the commissioner not necessary, or desirable for present or presently foreseeable future state road purposes, it may be transferred by lease for such period or periods of time and on such terms and conditions, including consideration, as the commissioner shall determine to be fair and reasonable, or it may be transferred by sale, or the commissioner may transfer the use thereof by a permit to use such airspace or any part thereof for such period or periods of time as he shall determine and under such terms and conditions, including consideration, as he shall deem fair and reasonable, except that in the case of a publicly or privately owned utility, no consideration shall be required for an easement through such airspace or any part thereof.

Every such transfer by sale shall be at public auction in the county in which the airspace to be transferred by sale is located, and the department shall advertise, by publication, the time, place and terms of such sale at least twenty days prior thereto. The publication shall be published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the airspace to be transferred by sale is located. The airspace shall be sold in a manner which will bring the highest and best price therefor. The department may reject any or all bids received at the sale. The commissioner shall keep a record, open to public inspection, indicating the newspapers in which the airspace to be transferred by sale was publicly advertised for sale, the highest bid received therefor and from what party, the party to whom sold, and the payment received therefor. Such record shall be kept for a period of five years and may thereafter be destroyed. Every such transfer by lease with any party other than another agency of this state or any county or municipality in this state or any agency thereof shall be upon the basis of competitive bids solicited by publication of a notice of the proposed lease published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the airspace to be transferred by lease is located.

The commissioner shall adopt and promulgate rules and regulations governing and controlling the transferring of airspaces by sale, lease, or permit to use, pursuant to the provisions of this section, which rules and regulations shall provide for the giving of preferential treatment in making leases or issuing permits to use to the persons from whom the airspace was acquired, or their heirs or assigns.

The commissioner may insert in any instrument executed pursuant to the provisions of this section such conditions as are in the public interest and have been approved in advance by the Governor.

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All moneys received from the sale or lease of, or permit to use, any airspace or any part thereof, shall be paid into the State Treasury and credited to the state road fund.

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§17-2A-20. Relocation assistance to and replacement housing costs for persons dislocated by highway construction.

The payment of relocation costs and replacement housing costs to persons dislocated by highway construction is hereby declared to be a cost of highway construction and may be paid from the state road fund, subject to the provisions of this section. The commissioner of highways shall make the payments authorized by this section to reduce hardships to persons so dislocated. In addition, the commissioner shall render advisory assistance to persons affected and shall call upon and coordinate the services of such other agencies of state and local government as may be capable of rendering such assistance to reduce hardships to persons affected and to reduce delays in highway construction. In rendering such advisory assistance, the commissioner may accumulate and maintain lists of various kinds of properties available to which persons affected may be relocated, and acquire and file such other information and take such other action as may be necessary to render such advisory assistance. With respect to persons dislocated by federal-aid highway projects, the commissioner shall provide a relocation assistance program which will comply with and implement the federal laws and regulations relating to relocation assistance to displaced persons as set forth in the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, being Public Law 91-646 enacted by the Ninety-first Congress of the United States of America, and the 1987 amendments thereto known as Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, being Public Law 100-17 enacted by the One Hundredth Congress of the United States of America.

Any individual, family, business concern (including the operation of a farm) or nonprofit organization to be displaced by a highway construction project shall be compensated consistent with the provisions and limitations of federal acts for reasonable and necessary costs to be incurred in consequence of being so displaced. When a family is displaced, no additional payment shall be made to individuals who are members of such family; but, if two or more displaced families occupy the same dwelling or comprise a single household, each family within such dwelling or household may receive relocation costs as provided in this section. Payments under this section are subject to the limitations provided herein and to any rules and regulations made by the commissioner as herein provided.

With respect to state highway projects and federal-aid highway projects, the commissioner shall have authority to make such payments for relocation costs, reestablishment costs, replacement housing costs, including the increased interest costs which the displaced person is required to pay for financing the acquisition of a comparable replacement dwelling, and reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, and expenses incidental to the transfer of property as are authorized by the abovementioned Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, being Public Law 91-646 enacted by the Ninety-first Congress of the United States of America, and the 1987 amendments thereto known as Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, being Public Law 100-17 enacted by the One Hundredth

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Congress of the United States of America.

The commissioner shall establish by rules and regulations a procedure for the payment of relocation costs within the limits of and consistent with the policies of this section and the aforesaid federal laws and regulations. Such rules and regulations may authorize lump sum payments to individuals or families, in lieu of their respective provable costs, based upon the size of the dwelling being vacated or the number of persons being affected or any other reasonable basis. The commissioner may authorize the obligations of or payment of relocation costs in advance of expenditure for relocation by any person, firm or organization eligible to receive such payment where such advance obligation or payment would speed the clearance of highway construction sites or reduce hardships.

With respect to state highway projects and federal-aid highway projects, the commissioner shall also have authority to comply with the aforesaid federal laws and regulations relating to providing last-resort replacement housing.

Nothing contained in this section or in the federal laws and regulations relating to relocation assistance and payments to displaced person shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the effective date of this section or of the federal laws and regulations relating to relocation assistance and payments to displaced persons.

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§17-2A-21. Commissioner authorized to contract for implementation of litter control programs.

In addition to all other powers granted and duties imposed upon the Commissioner, he or she shall contract with the Secretary of the Department of Environmental Protection and expend moneys from the highway litter control fund to implement the litter control program and litter control maintenance of the highways pursuant to article fifteen-a, chapter twenty-two of this code.

WV Legislature

§17-2A-22. Administration of engineering and design related service contracts.

In order to promote engineering and design quality and to ensure maximum competition by professional companies of all sizes providing engineering and design services, the commissioner of highways may establish cost principles for determining the reasonableness and allowability of various costs. These cost principles will govern the overhead ceilings, salary limits, expense reimbursement and any other cost the commissioner may deem necessary to regulate. The commissioner of highways shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code regarding standard cost principles for determining the reasonableness and allowability of various costs. The legislative rule may include provisions for deviations from the standard cost principles in special situations and circumstances.

WV Legislature

§17-2A-23. Administration of commercial vehicle and equipment related work orders.

In order to promote cost effective vehicle and equipment repair work efficiently and effectively and in order to provide for repair work to be done in a safe and timely manner when in-house repair is determined not to be cost effective or practical under the circumstances, the commissioner of highways may establish a cost effective analysis for determining the reasonableness and effectiveness of obtaining repair of vehicles and equipment by certain certified vendors.

The commissioner may issue a commercial work order to certified vendors for repair of vehicles and equipment when the commissioner determines that the repairs would extend the life of the equipment or vehicle a minimum of five years and that the expenditure would be the safest cost effective alternative to purchase of new vehicles and equipment or in-house repair.

Any commercial vendor of vehicle and equipment repair may apply to the commissioner for certification as a certified repair vendor under the provisions of this section. In order to qualify, the vendor must provide proof that it has the trained personnel, the required tools, equipment and facilities to provide the work. The commissioner shall inspect or cause to be inspected the facilities and shall review the qualifications of personnel of vendors applying for certification. If approved by the commissioner, the vendor may be certified as a qualified vendor for the type of repair work the commissioner determines the vendor is qualified to provide.

Prior to issuing a commercial work order with a certified vendor, the commissioner must determine the cost of repair of the vehicle or equipment. If on site inspection is required, the commissioner may issue a work order to provide for the inspection and estimate.

Preference for issuing vehicle and equipment repair work orders shall be given to in-state licensed qualified vendors: Provided, That a vendor which fails to guarantee its work for at least one year, or which fails to guarantee its work for a longer period if the longer period is comparable to that offered by local rebuild or repair shops, or which fails to complete any work order in the time specified within the work order, or which fails to complete any work order to the specifications of the work order, shall be decertified for a period of one year.

Nothing herein requires the commissioner of highways to issue a work order to any particular commercial vendor.

The commissioner of highways shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code regarding certification of qualified vendors and awarding work orders. The legislative rule may include provisions for deviations from the standard cost principles in special situations and circumstances.

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§17-2A-24. Special employment procedures for Division of Highways personnel.

[Repealed.]

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§17-2A-25. Road optimization and assessment data pilot program; legislative findings and purposes; reporting.

(a) The Legislature hereby finds and declares that:

(1) Properly maintained roads are important to the economic and industrial growth and development of the state and to the health, education, welfare, and prosperity of the state's residents;

(2) Roads that are not well-maintained because of potholes, patching, cracking, road shoulder issues, canopy brush, or drainage issues do not contribute to the health, education, welfare, and prosperity of the residents of this state;

(3) Data is and has been collected by the West Virginia Division of Highways for purposes of an overall assessment and evaluation of road maintenance; and

(4) The purpose of this section is to create a pilot program to study alternative, advanced methods of assessing the conditions of the roads that will lead to improved processes of addressing road maintenance needs.

(b) The Road Optimization and Assessment Data (ROAD) Pilot Program is hereby created. The Commissioner of Highways shall develop and implement the pilot program concerning the collection of data and the overall assessment of the conditions of the paved roads of the state and the repairs and maintenance required to ensure well-maintained roads. The pilot program shall include a combination of urban and rural roads, using Monongalia County and Preston County as the test areas for this pilot program and, to the broadest extend feasible:

(1) Use existing assessments in the pilot counties to teach the program;

(2) Incorporate machine learning (ML), artificial intelligence (AI), or other advanced technologies to assess state roads;

(3) Use Global Positioning System (GPS) data or geotagging, including high accuracy precision GPS, to indicate road geometry and curvature;

(4) Use laser measuring systems, including video, that are capable of longitudinal profiling, identifying and measuring of cracks, pavement distress, potholes, patching, road shoulder issues, canopy brush, and drainage issues;

(5) Use video for road imagery as well as canopy brush and drainage documentation;

(6) Use a reflectometer system to check the reflectivity of painted lines;

(7) Utilize post-data capture processing to create a baseline for road condition assessment based on standards of the Division of Highways and the ASTM D6433-11 Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys; and

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(8) Incorporate the data gathered pursuant to this section within the Division of Highways' existing pavement management system, or an alternative machine learning or artificial intelligence system in order to improve predictive analysis of roads and to guide in the performance of preventive maintenance for roads rather than reactive maintenance.

(c) The commissioner shall provide for the data capturing and processing pursuant to this section at intervals determined by the commissioner to adequately collect and assess data for maintenance purposes: *Provided*, That data capturing and processing shall occur at least twice during the pilot project. The data shall compare the changes in road conditions, such as deterioration of roads from previous conditions, average daily traffic, and heavy truck traffic if such information is available.

(d) The term of this pilot program is five years. At the conclusion of year two and year four of the pilot program, and at the conclusion of the pilot program, the commissioner shall report to the Joint Legislative Oversight Commission on Department of Transportation Accountability on the steps taken to implement the pilot program, identify the technologies used in the pilot program, outline the data collected through the pilot program, identify costs of the pilot program, summarize any improvements in road maintenance and pavement management processes that may be realized through the pilot program, and make recommendations concerning improvements to and continuation of the pilot program.

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§17-2A-26. Private installation of cattle guards on certain public roads; rule-making authority.

(a) Notwithstanding any provision of this code to the contrary, the Division of Highways may permit the installation of cattle guards on certain public roads in accordance with the provisions of this section.

(b) Cattle guards authorized under this section may be installed only on public roads that:

(1) Are classified as local access roads, farm-to-market roads, or dead-end public roads;

(2) Are not part of the interstate highway system, a United States route, or a primary or secondary state highway;

(3) Are located in areas of active agricultural or livestock operations; and

(4) Meet any additional eligibility criteria established by the Division of Highways by legislative rule.

(c) Any cattle guard installed pursuant to this section shall:

(1) Be designed, constructed, and installed in strict accordance with specifications established by the Division of Highways, including, but not limited to, the providing of required signage;

(2) Be installed entirely at the expense of the applicant;

(3) Be maintained, repaired, replaced, and removed at the expense of the applicant, or of the applicant’s heirs, devisees, and assigns, for the life of the installation; and

(4) Not unreasonably interfere with snow removal, roadway maintenance, or emergency vehicle access, as determined by the Division of Highways.

(d) Prior to installation, an applicant shall:

(1) Submit an application in a form prescribed by the Division of Highways;

(2) Demonstrate a bona fide agricultural or livestock-related need for the cattle guard;

(3) Execute an indemnification agreement holding harmless the State of West Virginia and the Division of Highways from any claims, damages, or liabilities arising from the installation, maintenance, or presence of the cattle guard; and

(4) Comply with any bonding or insurance requirements imposed by the Division of Highways.

(e) The Division of Highways retains sole discretion to approve, deny, condition, suspend, or

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revoke authorization for any cattle guard installed pursuant to this section if it determines that the installation:

(1) Poses a risk to public safety;

(2) Interferes with highway operations, including snow removal or maintenance activities; or

(3) Results in damage to state equipment or infrastructure.

(f) Upon revocation of authorization, the applicant, or the applicant's heirs, devisees, and assigns, shall promptly remove the cattle guard and restore the roadway to its original condition at no cost to the state.

(g) The Division of Highways shall propose legislative rules in accordance with §29A-3-1 *et seq.* of this code to implement and administer the provisions of this section, including, but not limited to, application procedures, design specifications, eligibility standards, maintenance requirements, and enforcement provisions.

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