WEST VIRGINIA CODE CHAPTER 17 ARTICLE 4

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§17-4-1. Classification of state roads; control over state roads; control by county courts of roads, bridges and landings; roads in state parks, forests and public hunting and fishing areas made part of state road system.

The state road system shall consist of roads functionally classified into five categories as follows: (1) Expressway; (2) trunkline; (3) feeder; (4) state local service; and (5) park and forest. The authority and control over the state roads shall be vested in the commissioner of highways.

The county courts shall retain the superintendence and administration of roads, bridges and landings that remain under their jurisdiction as provided in section one, article ten of this chapter.

The commissioner of highways shall take control of all existing roads which are publicly owned within the state parks system and in the state forests including public hunting and fishing areas, formerly the responsibility of the director of the department of natural resources, on the effective date of this section and shall assume control of their further construction, reconstruction and maintenance as a part of the state road system. The commissioner is responsible for construction, reconstruction and maintenance as a part of the state road system of any new roads for public usage that may be constructed with the approval of the director of the department of natural resources, in existing state parks, state forests, public hunting and fishing areas or any such roads for public usage which may be established on publicly owned lands in any future state park, state forest, public hunting or fishing areas.

The director of the department of natural resources has the authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks, state forests and public hunting and fishing areas.

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§17-4-2. Definitions of roads comprising state road system.

The following meanings shall be ascribed to roads comprising the state road system:

(a) "Expressway." -- Serves major intrastate and interstate travel, including federal interstate routes.

(b) "Trunkline." -- Serves major city to city travel.

(c) "Feeder." -- Serves community to community travel or collects and feeds traffic to the higher systems or both.

(d) "State local service." -- Localized arterial and spur roads which provide land access and socioeconomic benefits to abutting properties.

(e) "Park and forest." -- Serves travel within state parks, state forests and public hunting and fishing areas.

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§17-4-3. Classification of roads in state road system; reclassification.

All roads in the state road system shall be classified by the state road commissioner. Classification shall be according to functional level of service, either as expressway, trunkline, feeder, or state local service. The designation of a road as expressway, trunkline, feeder, or state local service, shall be subject to change, however, whenever in the judgment of the commissioner altered conditions require that a road be reclassified from one category to another.

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§17-4-4. Interstate and international highway planning.

The commissioner shall consider and plan the state's part in any contemplated interstate or international system of roads and highways, and may attend meetings and conferences within and without the state for discussion and planning of programs relating thereto.

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§17-4-5. Right of eminent domain.

The state road commissioner, or the state road commission may acquire by right of eminent domain any land or water, or any interest therein or any rights, ways, or easements thereon or thereover, for the purpose of constructing, widening, straightening, grading, or altering any state road, or for the purposes enumerated in section twenty-five of this article, or to provide a detour or temporary road or bridge while a road is in the process of construction, reconstruction, improvement, or repair, or for any other purposes authorized by any provision of this chapter, whenever a just compensation cannot be agreed upon by the owner or claimant of such property, for such taking, use, or damage.

The state road commissioner, or the state road commission, for any of the purposes aforesaid may likewise acquire by eminent domain any bridge or bridge site across any stream separating this state from an adjoining state, any portion thereof, or the approaches thereto, or any interest, franchise, right, or privilege in the same, whether the same be owned and operated by a bridge company, a railroad or electric company, or other railway, or other utility, or any other person, firm, or corporation, such right to be exercised to provide either for a permanent title, ownership, use, or easement thereon or thereover, or for a temporary use and easement thereon or thereover as a detour, or temporary road or bridge; and such rights may be acquired subject to the use by any railroad or electric company, or other railway or utility, or under such reasonable regulation as to such use as the court may prescribe. The state road commission may also exercise in any adjoining state such powers of eminent domain for any of the purposes aforesaid, whether such powers are now conferred or may be hereafter conferred upon the commission by any act of Congress of the United States, if such act of Congress be necessary for the exercise of such powers. Title to property condemned in any adjoining state may be taken either in the name of the state or of the state road commission.

The proceedings for the purposes aforesaid may be instituted in the name of the commissioner, or the state road commission, either at law or in equity, and prosecuted and determined as provided in chapter fifty-four.

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§17-4-6. Cost of acquiring rights-of-way.

The cost of acquiring all rights-of-way for road purposes shall be paid out of the state road fund.

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§17-4-7. Information to be filed with clerk of county court.

The state road commissioner shall promptly file with the clerk of the county court of each county, all changes in titles to rights-of-way, maps, plats, surveys and all discontinuances of state roads within the county.

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§17-4-8. Use of roadbed by railroad, telephone company, etc.

No railroad or electric or other railway shall be constructed upon the roadbed of any state road, except to cross the same, nor shall any person, firm or corporation enter upon or construct any works in or upon such road, or lay or maintain thereon or thereunder any drainage, sewer or water pipes, gas pipes, electric conduits or other pipes, nor shall any telephone, telegraph or electric line or power pole, or any other structure whatsoever, be erected upon, in or over any portion of a state road, except under such restrictions, conditions and regulations as may be prescribed by the state road commissioner. Whenever any railroad or electric or other railway, heretofore or hereafter constructed, shall cross any state road, it shall be required to keep its own roadbed, and the bed of the road or highway at such crossing, in proper repair, or else to construct and maintain an overhead or undergrade crossing, subject to the approval of the state road commissioner; and the tracks of such railroad or railway at grade crossings shall be so constructed as to give a safe and easy approach to and across the same, and when the construction of such approaches is made necessary by a change in the railroad grade at the grade crossing, the cost shall be upon the railway company.

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§17-4-8a. Road paving and utility work coordination.

(a) In order to avoid the destruction of newly paved roads, each utility and the Division of Highways shall coordinate with each other concerning the timing of paving activity and utility work that disturbs any paved road.

(b) For purposes of this section:

(1) "Paved road" means any paved road in the state road system.

(2) "Paving activity" means any paving or resurfacing of at least 300 linear feet of a state right-of-way but excludes patching.

(3) "Utility" means any utility as defined in §17-2A-17a of this code.

(c) (1) Beginning on December 31, 2025, and due annually on or before that date thereafter, each utility shall provide a report that lists all projects planned by the utility, during the next two years including anticipated construction start and stop dates, that require digging or cutting into any paved road to the district office of the Division of Highways in which the paved road is located. The report shall also include identification of any grants that have either been received or applied for that may result in work that affects a paved road. The Division of Highways shall review and consider such reports in conjunction with the division's planning of projects and paving activity.

(2) If the utility does not have plans to improve or replace any road asset under consideration in the next two calendar years, the said utility may submit a "no plans report" and opt out of the yearly report. Failure to comply with these reporting requirements may result in the Division of Highways to withhold issuing a "Right of Way Entry Permit" until the required report is submitted.

(d) Beginning September 1, 2025, the Division of Highways shall make available on the division's website the following:

(1) A map of its districts;

(2) A list of all planned paving activities with approximate paving activity dates and with reasonable paving activity location information; and

(3) A copy of all reports provided by a utility by district pursuant to this section for the most current year.

(e) Nothing in this section prohibits the Division of Highways from filling potholes or performing other necessary maintenance work for the safety of vehicular or foot traffic upon roads that are scheduled for utility projects.

(f) Nothing in this section prohibits a utility from digging or cutting and subsequently

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patching paved roads in accordance with §17-16-6 of this code in order to perform necessary utility repairs or projects. After performing any work that damages a paved road or other public right-of-way, the utility shall repair the road or right-of-way in accordance with the West Virginia Division of Highways Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects latest manual.

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§17-4-9. Separation, elimination or avoidance of railway-highway grade crossings -- When commissioner may require.

Whenever in his judgment it is necessary for the safety of the traveling public or to comply with the safety, design or construction standards for a federal-aid highway project, the state road commissioner may require any railroad company, owning, controlling or operating a railroad in this state, to eliminate railway-highway crossings at grade on existing highways and to avoid railway-highway crossings at grade on new highways, relocated highways and extensions of existing highways by separating the grades or by relocating an existing highway. The commissioner may determine the location, design and grade for any project or structure for the elimination or avoidance of railway-highway crossings at grade, and may determine whether a new, relocated or extended highway shall pass over or under the railroad right of way or tracks. The railroad company shall not be required to bear any part of the cost of construction or maintenance of such grade separation, except where the separation structure eliminates an existing grade crossing.

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§17-4-10. Same -- Commissioner's order to eliminate, etc., crossing; amendment to order.

(a) Whenever, in the judgment of the state road commissioner, it is necessary for the safety of the traveling public, or to comply with the safety, design or construction standards for a federal-aid highway project, that a railway-highway crossing at grade be eliminated on an existing highway or avoided on a new highway, relocated highway or extension of an existing highway by separating the grades or relocating an existing highway, the state road commissioner shall make an order to that effect and furnish a copy thereof by registered mail to the State Auditor or attorney of record of the railroad affected by the order.

(b) The commissioner's order shall include at least the following:

(1) A statement describing and locating the railway-highway crossing at grade to be eliminated or avoided; and

(2) A statement of the general plan to be followed in effecting the elimination or avoidance of the specified railway-highway crossing at grade, including general details concerning the following matters:

(A) Whether a new, relocated or extended highway shall pass over or under the railroad right-of-way or tracks; and

(B) The location, grade and width of the grade separation structure or crossing to be constructed and the angle at which the structure or crossing shall meet and converge into the highway bed on either side of the railroad tracks or right-of-way.

(c) Whenever a railroad company affected by the order specified in subsection (a) refuses to enter into a written agreement with the state road commissioner respecting a federal-aid railway-highway project for elimination or avoidance of railway-highway crossings at grade, the commissioner may amend the order made under subsection (a) to incorporate therein insofar as practicable all the details required by the regulations, policies and procedures of the Bureau of Public Roads, United States Department of Commerce, to be included in written agreements between a railroad and a state respecting federal-aid railway-highway projects. The amended order shall be furnished by registered mail to the State Auditor or attorney of record of the railroad affected thereby.

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§17-4-11. Same -- Protest against order; hearing; appeal.

Any railroad company dissatisfied with the order of the state road commissioner directing the separation or elimination of grades at any point, may, within thirty days after the receipt by the State Auditor or attorney of record of such railroad company of a copy of the order directing the separation or elimination at such grades, file with the state road commissioner a protest giving the reasons of said railroad why such order should not be enforced. On the filing of such protest, the state road commissioner shall set down for hearing the matter in issue. On the hearing of the protest the state road commissioner shall hear all evidence which may be offered by any party upon the reasonableness of the separation or elimination of the grades, and if the commissioner, from the evidence, shall find that the construction of the work is necessary, he shall enter an order to that effect, and direct that the work shall be proceeded with in accordance with this article.

Any order entered by the state road commissioner pursuant to the provisions of this section shall be subject to judicial review by the circuit court of the county in which the grades to be separated or eliminated are located, or the circuit court of Kanawha county, upon the filing in such court or with the judge thereof in vacation, of a petition for appeal by the party or parties aggrieved by such order, within thirty days from the date of the giving of written notice of such order by the state road commissioner to the party or parties to the hearing of the protest by certified or registered mail.

The party or parties making such appeal shall forthwith send a copy of such petition for appeal, by certified or registered mail, to the state road commissioner. Upon receipt of such copy of such petition for appeal the state road commissioner shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was entered. The costs of such transcript shall be recovered by the party substantially prevailing on appeal.

The court sitting in lieu of the jury, or judge thereof in vacation, shall, after due notice, conduct a hearing on the issues presented by such appeal and shall permit argument, oral or written or both, by the parties. The court shall permit such pleadings, in addition to the pleadings before the state road commissioner, as it deems to be required. Evidence relating to the making of the order complained of and relating to the questions raised by the allegations of the pleadings or other questions pertinent in the proceeding may be offered by the parties to the proceeding.

Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, any circuit court to which an appeal has been made as provided in this section, may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of order of the state road commissioner complained of or to grant such other relief as may be appropriate pending final determination.

A circuit court to which an appeal has been made as provided in this section, may affirm,

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annul or revise the order of the state road commissioner complained of, or it may remand the proceeding to the state road commissioner for such further action as it directs.

The decision of the circuit court on an appeal from the state road commissioner shall be final, subject only to review by the Supreme Court of Appeals of West Virginia upon a petition for certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the state road commissioner.

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§17-4-12. Same -- Railroad to file plans, etc., for separation with commissioner.

Within sixty days after the entry of any order by the state road commissioner, directing a separation or elimination of grades at any point, as herein provided, unless legal proceedings be taken, the railroad company affected by such order shall, in the case of a separation of grades, prepare and present to the state road commissioner for his approval, plans, specifications and estimates of cost of the necessary approaches thereto.

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§17-4-13. Same -- Bidding upon approval of plans; work to be let to lowest responsible bidder.

Upon the approval of such plans and specifications by the state road commissioner, the railroad company affected shall secure sealed bids for the construction of such work, and within thirty days after the approval of such plans shall receive and open such bids, after having notified the road commissioner five days in advance of the day on which such bids shall be opened. The work shall be let to the lowest responsible bidder, subject to the provisions hereinafter contained. The successful bidder shall be required to prosecute the work to completion with reasonable diligence.

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§17-4-14. Same -- Distribution of cost between railroad and state.

The total cost of preparing plans, specifications and estimates, of the necessary property including damages to property not taken, of securing bids, and of the work, in grade separations, shall be borne by the railroad company or companies and the state: Provided, however, That unless otherwise agreed upon, said railroad company or companies involved shall be liable for ten per cent of such total cost: Provided, further, That all right-of-way, owned by the state or the railroad company or companies and needed and used for such grade separations, shall be donated for that purpose and shall not be considered as a part of such total cost to be prorated between the parties involved.

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§17-4-15. Same -- Rejection of bids; new bids; performance of work by state or railroad.

The state road commissioner shall have the authority to order the rejection of any or all bids submitted for the construction of any work ordered to be done under the provisions of this article, and the railroad company shall secure new bids. The state road commissioner or the railroad company affected shall have the power to reject any and all bids, and elect to do the work itself, in which event there shall not be charged to the railroad company or to the state road commissioner any sum in excess of what it would have been required to pay had the contract been let to the lowest responsible bidder.

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§17-4-16. Same -- Payment of state's share of cost; commissioner may furnish engineer.

In all cases the state road commissioner shall, as the work progresses, pay to the railroad company affected its share of the cost of such work as herein provided, which payment shall be made upon estimates furnished by the chief engineer of such railroad company. The state road commissioner shall have the right to furnish an engineer, at his expense, who shall act in cooperation with the engineering department of the railroad company affected in the supervision of such work.

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§17-4-17. Same -- Maintenance of work.

After the construction of a grade separation under this article, where the highway is carried over the railroad the state shall maintain the state highway and the structures supporting it and the drainage thereof, and the railroad company shall maintain its tracks; and where the state highway is passed under the railroad then the state shall maintain the highway and the drainage thereof, and the railroad company shall maintain its roadbed and the tracks and the structures supporting the same: Provided, however, That the state, at its sole expense, shall bear the cost of repairing or replacing any part of such supporting structure which may be damaged or destroyed by highway traffic; and the railroad company, at its own sole expense, shall bear the cost of repairing or replacing any part of such supporting structure which may be damaged or destroyed by railroad traffic: Provided further, That the provisions of this section shall not be applicable to grade separations constructed prior to the effective date of this act.

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§17-4-17a. Same -- Relocation or reconstruction of existing grade separation structures.

The state road commissioner shall have the same authority and follow the same procedure and the cost and maintenance provision shall be the same, in the relocation and reconstruction of existing grade separation structures, where the tracks of any railroad and any state road cross, as is provided in sections nine to seventeen, inclusive, of this article.

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§17-4-17b. Relocation of public utility lines on highway construction projects.

(a) Whenever the division reasonably determines that any public utility line or facility located upon, across, or under any portion of a state highway needs to be removed, relocated, or adjusted in order to accommodate a highway project, the division shall give to the utility reasonable notice in writing as mutually agreed, but not to exceed 18 months, directing it to begin the physical removal, relocation, or adjustment of such utility obstruction or interference at the cost of the utility, including construction inspection costs and in compliance with the rules of the division and the provisions of §29A-3-1 et seq. of this code.

(b) If the notice is in conjunction with a highway improvement project, it will be provided at the date of advertisement or award. Prior to the notice directing the physical removal, relocation, or adjustment of a utility line or facility, the utility shall adhere to the division's utility relocation procedures for public road improvements which shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set of plans for the proposed highway improvement project;

(2) The utility must within a reasonable time submit to the division a written confirmation acknowledging receipt of the plans and a declaration of whether or not its facilities are within the proposed project limits and the extent to which the facilities are in conflict with the project;

(3) If the utility is adjusting, locating, or relocating facilities or lines from or into the division's right-of-way, the utility must submit to the division plans showing existing and proposed locations of utility facilities.

(4) The utility's submission shall include with the plans a work plan demonstrating that the utility adjustment, location, or relocation will be accomplished in a manner and time frame established by the division's written procedures and instructions. The work plan shall specify the order and calendar days for removal, relocation, or adjustment of the utility from or within the project site and any staging property acquisition or other special requirements needed to complete the removal, relocation, or adjustment. The division shall approve the work plan, including any requests for compensation, submitted by a utility for a highway improvement project if it is submitted within the established schedule and does not adversely affect the letting date. The division will review the work plan to ensure compliance with the proposed improvement plans and schedule.

(c) If additional utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within 30 calendar days after receipt of the division's written notification of the additional work. The utility's revised work plan shall be reviewed by the division to ensure compliance

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with the highway project or improvement. The division shall reimburse the utility for work performed by the utility that must be performed again as the result of a plan change on the part of the division.

(d) Should the utility fail to comply with the notice to remove, relocate, or adjust, the utility is liable to the division for direct contract damages, including costs, fees, penalties, or other contract charges, for which the division is proven to be liable to a contractor caused by the utility's failure to timely remove, relocate, or adjust, unless a written extension is granted by the division. The utility shall not be liable for any delay or other failure to comply with a notice to remove, relocate or adjust that is not solely the fault of the utility, including, but not limited to, the following:

(1) The division has not performed its obligations in accordance with the division's rules;

(2) The division has not obtained all necessary rights-of-way that affect the utility;

(3) The delay or other failure to comply by the utility is due to the division's failure to manage schedules and communicate with the utility;

(4) The division seeks to impose liability on the utility based solely upon oral communications or communications not directed to the utility's designated contact person;

(5) The division changes construction plans in any manner following the notice to remove or relocate and the change affects the utility's facilities; or

(6) Other good cause, beyond the control of and not the fault of the utility, including, but not limited to, labor disputes, unavailability of materials on a national level, act of God, or extreme weather conditions.

(e) In order to avoid construction delays and to create an efficient and effective highway program, the division may schedule program meetings with the public utility on a quarterly basis to assure that schedules are maintained.

(f) If a utility that is required by law to bear all or a portion of its own relocation costs elects to pursue a reimbursement agreement with the division pursuant to this subsection and provides the division with sufficient evidence to demonstrate that the utility is not adequately staffed, equipped, or capitalized to perform such relocation work with its own forces or contractors at a time convenient to and in coordination with the associated highway project, the division may pay for the associated relocation costs, including, but not limited to, design engineering, design review, construction, and inspection costs, out of the State Road Fund: Provided, That the utility shall reimburse the division in full for such portion of the relocation costs that it is required by law to bear within two years of the completion of the highway project. The division shall deduct from the utility's reimbursement amount any costs resulting from work performed as a result of plan changes made by the division. Before the division may pay any relocation costs, the division and the

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utility shall enter into a written reimbursement agreement containing terms that are mutually acceptable to the division and the utility seeking the reimbursement agreement.

(1) Preliminary engineering design work associated with utility relocations to be paid for by the division pursuant to a reimbursement agreement shall be completed by any of the following methods:

(A) The division's or the utility's internal forces;

(B) A consultant selected by the division if the contract is administered by the division: Provided, That the selected consultant shall be pre-approved by the utility; or

(C) Inclusion as part of the highway construction contract let by the division as agreed to by the utility: Provided, That the subcontractor performing the preliminary engineering design work associated with the relocation is pre-approved by the utility.

(2) Utility relocation construction work paid for by the division pursuant to a reimbursement agreement shall be completed by either of the following methods:

(A) A contract awarded by the division to the lowest qualified bidder based on an appropriate competitive solicitation: Provided, That the lowest qualified bidder for utility relocation construction work is pre-approved by the utility; or

(B) Inclusion as part of the highway construction contract let by the division as agreed to by the utility: Provided, That the subcontractor performing the utility relocation construction work is pre-approved by the utility.

(3) All design and construction work paid for by the division pursuant to a reimbursement agreement is subject to the reasonable inspection and acceptance of the utility, whose acceptance shall not be unreasonably withheld, and shall be performed in accordance with the specifications and standards required by the utility.

(4) All relocation work performed pursuant to a reimbursement agreement shall conform to applicable state and federal laws or regulations.

(5) The provisions of this subsection are completely voluntary and shall not be interpreted to require any utility to enter into a reimbursement agreement with the division or avail itself of the options authorized by this subsection.

(6) The division may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code and the division may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code in order to comply with this subsection.

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§17-4-17c.

Repealed.

Acts, 2006 Reg. Sess., Ch. 201.

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§17-4-17d. Relocation of public utility lines and public service districts utility lines on state highway construction projects.

Whenever the Commissioner of Highways determines that any public utility line owned by a county or municipal governmental body located upon, across or under any portion of a state highway needs to be relocated in order to accommodate a highway project for which proportionate reimbursement of the cost is not available from any federal program, the commissioner shall notify the public utility owning or operating the facility which shall relocate the same in accordance with this section, and the cost of the relocation shall be paid out of the state road fund.

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§17-4-17e. Utility relocation on state highway construction projects financed by proceeds of bonds or notes issued before July 1, 2021.

Subject to the provisions of §17-4-17d of this code, and notwithstanding any other provisions to the contrary, whenever the Commissioner of Highways determines that any utility facility located upon, across, above, or under any portion of a state highway needs to be relocated in order to accommodate a highway project funded, in whole or in part, with proceeds of bonds or notes issued by the division, commissioner, West Virginia Parkways Authority, or the State of West Virginia on or after January 1, 2018, and on or before July 1, 2021, the commissioner shall notify the utility owning or operating the facility, which shall relocate the facility in accordance with this article and in accordance with the cost-sharing provisions of this section. The utility shall bear 85 percent of any such relocation costs, and the Division of Highways shall bear 15 percent of any such relocation costs. The division's share shall be paid out of the State Road Fund or paid with other eligible funds, within two years of completion of the highway project, and shall be considered a cost of the highway project: Provided, That nothing in this section shall alter or amend the responsibility of the division to pay for the cost of utility facilities relocation when such costs are incurred to accommodate a highway project and such utilities maintain pre-existing property rights in their facilities' present location.

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§17-4-18. Approved types of paving to be determined and advertised.

Before the state road commissioner shall advertise for any contract for the paving of any state road, he shall determine upon and approve plans and specifications for the construction of standard types of paving suitable for the project contemplated, and shall include in the advertisement and proposals for such work the types of paving approved.

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§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

(a) All work of construction and reconstruction of state roads and bridges, and the furnishing of all materials and supplies therefor, and for the repair thereof shall be done and furnished pursuant to contract, except that the commissioner may not be required to award any contract for work which can be done advantageously, economically and practicably by commission forces or prison labor and by use of state road equipment, or for materials and supplies, which are manufactured, processed or assembled by the commissioner: Provided, That the commissioner may not be required to award any contract for work, materials or supplies for an amount less than $3,000. In all the work, the commissioner shall utilize state road forces or prison labor and state road equipment and shall manufacture, process and assemble all the materials and supplies for the work whenever and wherever the commissioner, in his or her discretion, finds work and services advantageous, economical and practicable in the state road program.

(b) If the work is to be done, or the materials therefor are to be furnished by contract, the commissioner shall thereupon publish the following described advertisement as a Class II legal advertisement, in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county or municipality in which the road lies.

(c) The advertisement shall also be published at least once in at least one daily newspaper published in the city of Charleston and in other journals or magazines as may to the commissioner seem advisable. The advertisement shall solicit sealed proposals for the construction or other improvement of the road, and for the furnishing of materials therefor, accurately describing the same, and stating the time and place for opening the proposals and reserving the right to reject any and all proposals: Provided, That whenever the estimated amount of any contract for work or for materials or supplies is less than $3,000, the commissioner may not be required to advertise the letting of the contract in newspapers as above required, but may award the contract to the lowest responsible bidder, when two or more sealed proposals or bids have been received by him or her without the advertisement, but the contract may not be so awarded unless the bid of the successful bidder is $3,000 or less.

(d) The commissioner shall have the power to prescribe proper prequalifications of contractors bidding on state road construction work: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(e) To all sealed proposals there shall be attached the certified check of the bidder or bidder's bond acceptable to the commissioner, in the amount as the commissioner shall specify in the advertisement, but not to exceed five percent of the aggregate amount of the bid; but the amount shall never be less than $5,00. The proposals shall be publicly opened

and read at the time and place specified in the advertisement, and the contract for the work, or for the supplies or materials required therefor shall, if let, be awarded by the commissioner to the lowest responsible bidder for the type of construction selected.

(f) In case all bids be rejected, the commissioner may thereafter do the work with commission forces or with prison labor, or may readvertise in the same manner as before and let a contract for the work pursuant thereto.

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§17-4-20. Bidder's bond required; return or forfeiture of bond.

(a) In any case where a contract for work and materials shall be let as a result of competitive bidding, the successful bidder shall, within 20 days after notice of award, execute a formal contract to be approved as to its form, terms, and conditions by the commissioner, and shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond, payable to the State of West Virginia, to be approved by the commissioner, in such amount as the commissioner may require, but not to exceed 110 percent of the contract price, conditioned that the contractor shall well and truly perform the contract. The commissioner may determine individual contractor surety or collateral bond amounts based upon objective criteria set by the commissioner, and any final decision that adversely affects a contractor shall be a contested case subject to appeal under Chapter 29A of this code.

(b) The contractor shall pay in full to the persons entitled thereto for all material, gas, oil, repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of equipment, and labor used by the contractor in the performance of such contract, or which reasonably appeared, at the time of delivery or performance, would be substantially consumed in and about the performance of the contract. A legal action may be maintained upon the bond for breach thereof by any person for whose benefit the bond was executed or by his or her assignee.

(c) The bidder who has the contract awarded to him or her and who fails within 20 days after notice of the award to execute the required contract and bond shall forfeit such check or bond, which shall be taken and considered as liquidated damages and not as a penalty for failure of such bidder to execute the contract and bond.

(d) Upon the execution of the contract and bond by the successful bidder, his or her check or bond shall be released to him or her. The checks or bonds of the unsuccessful bidders shall be released to them promptly after the bids are opened and the contract awarded to the successful bidder.

(e) A duplicate copy of such contract and bond shall be furnished by the Commissioner of the Division of Highways, in electronic or paper form as may be required, to the county clerk of the county in which such contract is to be performed. It is the duty of the county clerk to bind and preserve the same in his or her office and index the same in the name of the commissioner and of the contractor.

WV Legislature

§17-4-21. Form and signing of deeds and contracts made by commissioner.

Every deed and contract made by the state road commissioner shall be made in the name of the state road commission and shall be signed by the commissioner, and every contract shall also be signed by the contractor.

WV Legislature

§17-4-22. Combination in restraint of trade; persons limiting competition in bidding.

Contracts authorized by this chapter shall not be let to any person, association of persons, firm, company or corporation, connected, directly or indirectly, with any combination in the form of an unlawful trust in restraint of trade, or who has an understanding, directly or indirectly, to limit, in any manner, competition in bidding upon the construction of any state road or bridge, or for furnishing any materials. Any such combination or unlawful trust is hereby forbidden. Any person, association of persons, firm or corporation entering into, or being a part of, any such combination or unlawful trust shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding $1,000; and every person, county or state officer, or any employee of any county of the state, or of the state road commissioner or other person connected therewith, directly or indirectly, and any officer or member of a corporation, who shall be engaged in any way in promoting any such combination or unlawful trust, or in aiding or abetting the same, or knowingly committing any acts in pursuance thereof, in addition to being subject to the fine aforesaid, may, in the discretion of the court, be imprisoned not exceeding six months.

WV Legislature

§17-4-23. Certificate showing constituents of materials; false certificates.

Any person, firm or corporation offering for sale or selling to the state any paints, metal or metal culverts, fence or fencing, or any other materials or supplies for use upon or in the construction of any road or bridge or part thereof, shall, if requested, furnish therewith a certificate under oath, showing its purity, chemical constituents, and the percentage of impurities contained therein. Any person, firm or corporation knowingly making or furnishing a false certificate shall be guilty of perjury.

Any contract made by reason of any false statement or representation may be cancelled by order of the court.

WV Legislature

§17-4-24. Testing and approval of materials or supplies.

Materials or supplies shall be used in the construction, reconstruction, improvement, repair, or maintenance of state roads only when tested, standardized and approved in writing by the state road commissioner.

WV Legislature

§17-4-24a. Guardrail construction.

Beginning July 1, 1988, any guardrail placed or replaced in new or existing locations on the state road system must be constructed using wooden posts unless use of another material would reduce the costs of such construction or reconstruction: Provided, That when guardrails are damaged, materials of a like kind may be used.

WV Legislature

§17-4-25. Acquisition, establishment and operation of quarries, cement and other plants.

For the purpose of obtaining materials to be used in the construction and maintenance of state roads and highways, the state road commissioner is hereby authorized and empowered, on behalf of the state, to establish stone quarries, stone crushing plants, brick kilns, cement plants, and other plants deemed by him needful or necessary in the prosecution of his work, and to acquire lands and appurtenances requisite thereto. The commissioner shall also have the power to rent, purchase, condemn or acquire by any other lawful method, stone quarries, gravel, clay, sand, and other deposits, with rights-of-way thereto, and wharves, landings, switches and storage places for shipping or receiving materials; hire or purchase all means of transportation for the same; remove such materials from such lands and other places; prepare such materials for use; manufacture such materials into road-making products; purchase all necessary machinery, tools and other equipment; make such contracts and employ such labor as may be needful or necessary to establish and operate such plants; acquire, prepare, manufacture and transport such materials for use, and to do all other things needful or necessary in connection with the purchase, production, accumulation and distribution of such materials for the uses aforesaid. All costs and expenses incidental thereto shall be paid out of the state road fund. The commissioner may sell the surplus of such materials, products or equipment to any county or municipality of the state, or to any person, firm or corporation, at not less than actual cost, when the same are to be used exclusively in the building of roads, streets and alleys in this state. The commissioner shall pay to the State Treasurer the funds received therefor, to be credited to the state road fund.

The commissioner is empowered to enter into contracts with the proper authorities of other states to establish, jointly, plants for the preparation and manufacture of cement, brick, stone and other materials to be used in the construction of roads as provided herein, and to operate jointly such plants, acquire all materials and do all other things necessary for such operation, and the disposition of the products thereof, for the more economic prosecution of the work of building and maintaining public roads.

WV Legislature

§17-4-26. Municipal streets and bridges and free bridges designated as connecting part of state road system -- Authorized.

The state road commissioner may, at any time, after due consultation with and notice to the governing body of the municipal corporation, locate and designate or relocate and redesignate, as a connecting part of the state road system, any bridge or street within a municipal corporation. The commissioner may construct, reconstruct, improve and maintain the designated or redesignated connecting part at the cost and expense of the state.

Any existins free bridge forming a connecting link between two counties or two state routes is hereby adopted as part of the state road system and shall hereafter be maintained by the state, and any existing free bridge forming a connecting link between this and another state is hereby adopted as part of such system, and shall, as to that part of the bridge within the boundary of this state, be maintained by the state.

WV Legislature

§17-4-27. Same -- Control of connecting parts of state road system within municipalities.

The state road commissioner shall exercise the same control over connecting parts of the state road system in municipalities, except the regulation of traffic, that he exercises over such system generally, but he shall assume no greater duty or obligation in the construction, reconstruction and maintenance of streets which are part of the state road system than he is required to assume in the case of state roads outside of municipalities. In order, however, to promote the safe and efficient utilization of such streets, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any municipality on any highway or street hereafter constructed with state or federal aid shall be subject to the approval of the state road commissioner.

WV Legislature

§17-4-28. Same -- Notice and laying of necessary pipes, etc., before reconstruction within municipality.

Before the state road commissioner shall construct, reconstruct, improve or repair a section of the state road system within a municipality he shall, where the road is an "expressway" or "truckline," and he may, where said road is a "feeder" or "state local service" road, give the municipality a notice of such proposed construction, reconstruction, improvement, and repair, and shall likewise give notice to all public service companies and public utilities of such proposed work. Upon receipt of such notice, the municipality shall by ordinance compel all abutting property owners to lay all necessary pipe and to make necessary connections along, in, under, and through the said section of said road before the construction, reconstruction, improvement, or repair is started. All public service companies and public utilities receiving notice from said state road commissioner shall also lay all necessary pipe and make necessary connections along, in, under, and through said section of said road before the construction, reconstruction, improvement, or repair is started.

Should any person, firm, association, or corporation, including municipal corporation, fail or neglect to make all such necessary repairs and connections within a reasonable time after the enactment of such ordinance or the service of notice on them by the state road commissioner, then the said state road commissioner may law such pipe and make such connections and the cost and expenses of laying such pipe and making such connections shall be chargeable to the person, firm, association, or corporation who shall have failed or refused to lay such pipe and make such connections, and the state road commissioner shall collect all of such necessary costs and expenses from the person, firm, association, or corporation, who shall have so failed, refused or neglected to perform such work, by proper action in any court having jurisdiction thereof. However, the cost and expenses shall not be chargeable against any municipality to the extent that the same would impose an indebtedness against any municipality in excess of the amount allowed by law.

WV Legislature

§17-4-29. Same -- Taking over streets not to affect franchise.

The taking over of streets as provided in section twenty-six shall not affect the rights owned or held by any person under any franchise now existing or hereafter granted.

WV Legislature

§17-4-30. Same -- Taking over streets not to affect existing contracts.

The taking over of streets as a connecting part of the state road system shall not affect any existing contract for construction, reconstruction or improvement.

WV Legislature

§17-4-31. Same -- Rules and regulations of commissioner to govern streets taken as connecting parts of state road system.

The state road commissioner may, by reasonable rules and regulations, govern the widths and grades of streets designated as connecting parts of the state road system. He may regulate the opening of pavement for the construction or repair of service lines or substructures, and may require adequate bond to secure the proper replacement of the pavement. He may also make other reasonable regulations concerning the construction and maintenance of the streets.

In the absence of regulations by the commissioner, the municipal authorities may continue to exercise the same authority that they have over other streets within their jurisdiction.

WV Legislature

§17-4-32.

Repealed.

Acts, 1967 Reg. Sess., Ch. 175.

WV Legislature

§17-4-33. Inspection, condemnation, etc., of unsafe bridges.

The commissioner shall inspect all bridges upon state roads. If any bridge is found to be unsafe, the commissioner shall promptly condemn, close and repair it.

WV Legislature

§17-4-34. Contracts for interstate bridges; report to Governor.

When it is necessary and proper to connect a state road with a public highway of an adjoining state, the state road commissioner, with the approval of the Governor, is authorized to enter into a contract with the proper authorities of the adjoining state for the joint purchase, erection, and maintenance of a bridge across the stream separating this state from the adjoining state. The commissioner shall file with the Governor a report in writing, with necessary maps, plans and specifications of the bridge, showing the estimated cost, and all other facts that he may deem necessary, or that may be required by the Governor.

WV Legislature

§17-4-35. Diversion of nonnavigable stream.

The state road commissioner, incidental to the construction and maintenance of state roads, shall have the power and authority to change or divert any stream of water which is not navigable, in order to avoid or facilitate the crossing thereof, or to economize in the construction or maintenance of any such road, or to protect the same from damage. To effect a change or diversion of any such stream, he may exercise the right of eminent domain.

WV Legislature

§17-4-36. Construction and removal of sidewalks along state roads; injury to, failure to repair, etc., sidewalks.

Whenever the safety or convenience of the traveling public demands it, the state road commissioner may construct and maintain sidewalks along state roads. Any person, at his own expense, may build, with the permission of the state road commissioner, a sidewalk along any state road for the free use of the public. The commissioner shall order the sidewalk removed if it interferes with the public travel. Any person who, without authority, injures or destroys any such sidewalk and fails to repair the same, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five nor more than $50.

WV Legislature

§17-4-37. State not to be made defendant in action for damages.

The state shall not be made the defendant in any proceeding to recover damages because of the defective construction or condition of any state road or bridge.

WV Legislature

§17-4-38. Violations of article; penalty.

Except as otherwise provided, a person violating any of the provisions of this article or any of the rules or regulations of the state road commissioner shall be guilty of a misdemeanor and, upon conviction shall be fined not less than ten nor more than $100, or be imprisoned not less than five nor more than thirty days, or both.

WV Legislature

§17-4-39. Controlled-access facilities -- Defined.

For the purpose of this chapter, a controlled-access facility is defined as a highway or portion of a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways may be freeways open to use by all customary forms of highway traffic; or they may be parkways from which trucks, buses, and other commercial vehicles shall be excluded.

WV Legislature

§17-4-40. Same -- Authority to establish, maintain, regulate, etc.

The state road commissioner is hereby authorized to plan, construct, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use as a part of the state road system wherever present or reasonably anticipated future traffic conditions render such special facilities necessary. The commissioner, in addition to specific powers granted in connection with controlled-access facilities, shall also have and may exercise, relative to such controlled-access facilities, any and all additional authority now or hereafter vested in him relative to highways or the state road system. He may also regulate, restrict, or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with section thirty- nine of this article.

WV Legislature

§17-4-41. Same -- Design of controlled-access facilities.

The state road commissioner is authorized to so design any controlled-access facility and to so regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection the commissioner is authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, or stripes, and the proper lane for such traffic by appropriate curbs, barriers, signs, markers, stripes or other devices. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified by the commissioner.

WV Legislature

§17-4-42. Same -- Acquisition of property and property rights.

The state road commissioner may acquire private or public property rights or any interests in lands for controlled-access facilities and service roads, including existing and vested rights of access, air, view and light, by grant, gift, devise, purchase or condemnation in the same manner as the commissioner is now or may hereafter be authorized by law to acquire such property or property rights in connection with the highways of the state road system. In connection with the acquisition of such property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith, the commissioner may, in his discretion, acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will best be served even though said entire lot, block, or tract is not immediately needed for the right of way proper.

WV Legislature

§17-4-43. Same -- New and existing facilities; grade crossing eliminations; consent to connect.

The state road commissioner may designate and establish controlled-access highways as new and additional facilities, or he may designate and establish an existing street or highway as a controlled-access facility or as a part of a controlled-access facility, and in the event such existing street or highway be so designated, the commissioner may acquire, by grant, gift, purchase or if the exercise of the right of eminent domain be necessary for acquisition purposes, shall condemn existing and vested access rights of abutting landowners to such existing street or highway if such access rights are taken or destroyed. The commissioner is authorized to provide for the elimination of intersection at grade of controlled-access facilities with existing state roads, city streets or other public or private roads or ways by grade separation or service road, or by closing off of such roads and streets at the right-of-way boundary line of such controlled-access facility. No city street, state road or other public or private road or way shall be opened into or connected with any such controlled-access facility without the written consent and previous approval of the state road commissioner, which consent and approval shall be given only if the public interest shall be served thereby.

WV Legislature

§17-4-44. Same -- Authority to contract with other governmental agencies.

The state road commissioner is authorized to enter into agreements with municipalities, counties or other political subdivisions of the state, or with the federal government or any agency thereof, respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access facilities or other public ways to facilitate the establishment of such controlled-access facilities.

WV Legislature

§17-4-45. Same -- Local service roads and streets.

In connection with the development of any controlled-access facility the state road commissioner is authorized to plan, designate, establish, use, regulate, alter, improve, maintain and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over said local service roads as a part of the state road system, in the same manner as is authorized over controlled-access facilities under the terms of this article, if, in his opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by all devices designated as necessary or desirable by the commissioner.

WV Legislature

§17-4-46. Same -- Certain commercial enterprises prohibited; commercial enterprises on service roads; turnpikes excluded from provisions of section.

No automotive service station or other commercial establishment for serving motor vehicle users shall be constructed or located within the right-of-way of, or on publicly owned or publicly leased land acquired or used for or in connection with, a controlled-access facility. Emergency services for disabled vehicles shall be authorized or conducted by the state road commissioner. The state road commissioner may construct service roads adjacent to a controlled-access facility in such a manner as to facilitate the establishment and operation of competitive commercial enterprises for serving motor vehicle users on private property abutting such service roads.

Nothing in this section, however, shall have any application to any turnpike project as defined in section four, chapter one hundred thirty-nine, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as amended.

WV Legislature

§17-4-47. Access from commercial, etc., property and subdivisions to highways -- Purposes of regulation; right of access; provisions inapplicable to controlled-access facilities; removal of unauthorized access; bond for access.

(a) Reciprocal access between state highways and real property used or to be used for commercial, industrial or mercantile purposes and reciprocal access between state highways and real property that is subdivided into lots is a matter of public concern and shall be regulated by the Commissioner of Highways to achieve the following purposes:

(1) To provide for maximum safety of persons traveling upon, entering or leaving state highways;

(2) To provide for efficient and rapid movement of traffic upon state highways;

(3) To permit proper maintenance, repair and drainage of state highways; and

(4) To facilitate appropriate public use of state highways.

(b) Except where the right of access has been limited by or pursuant to law, every owner or occupant of real property abutting upon any existing state highway has a right of reasonable means of ingress to and egress from such state highway consistent with those policies expressed in subsection (a) of this section and any regulations issued by the commissioner under section forty-eight of this article.

(c) If the construction, relocation or reconstruction of any state highway, to be paid for, in whole or in part, with federal or state road funds, results in the abutment of real property as defined in subsection (a) of this section on the state highway that did not previously abut on it, no rights of direct access shall accrue because of such abutment. However, the commissioner may authorize or limit access from an abutting property if the property is compatible with the policies stated in subsection (a) of this section and any regulations issued by the commissioner as authorized by section forty-eight of this article.

(d) The policies expressed in this section are applicable to state highways generally and shall in no way limit the authority of the Commissioner of Highways to establish controlled-access facilities under sections thirty-nine through forty-six, inclusive, of this article.

(e) Any unauthorized access to a state highway may be removed, blocked, barricaded or closed in any manner considered necessary by the commissioner to protect the safety of the public and enforce the policies of this section and sections forty-eight, forty-nine and fifty of this article.

(f) As a condition of granting access to a state highway, the commissioner may require the owners of real property developed or to be developed to provide a bond in an amount the commissioner determines necessary to compensate the division for improvements to highway facilities required as a result of the development. This bond shall be held a maximum of ten years: Provided, that no bond shall be required for any residential

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development consisting of one hundred homes or less.

WV Legislature

§17-4-48. Same -- Regulations by commissioner.

The state road commissioner is hereby authorized to issue reasonable regulations specifying standards for the location, design and construction of access facilities to state highways and any other regulations necessary to carry out the policies stated in section forty-seven of this article. Such regulations may be based upon any or all of the following:

(a) Standards suggested by any public organization or body concerned with highway or traffic safety; or

(b) Studies, surveys or reports made for the commissioner or for any other governmental agency; or

(c) Any other data deemed relevant by the commissioner. Regulations affecting access previously issued by the commissioner or the state road commission shall continue in effect until altered or withdrawn by the commissioner.

WV Legislature

§17-4-49. Same -- Points of commercial, etc.; access to comply; plans, objections and procedures for new points; review of and changes in existing points; commissioner's preliminary determination; requiring notice.

(a) No new points of access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes may be opened, constructed or maintained without first complying with this section and sections forty-seven and forty-eight of this article. Access points opened, constructed or maintained without compliance are unauthorized.

(b) Plans for any new point of access shall be submitted to the Commissioner of Highways directly and the following rules shall apply:

(1) Notice of the proposed new point of access shall be filed with the commissioner, along with a plan of the proposed new point of access.

(2) The commissioner shall review the plan to ensure compliance with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article.

(3) If the commissioner objects to a plan, he or she shall reduce his or her objections to the proposed new point of access to writing and promptly furnish notice of the objection to the owner or owners of the real property affected and advise the owner or owners of the right to demand a hearing on the proposed plan and the objections. If a plan is not objected to within six weeks from the time it is filed with the commissioner, it is considered approved by the commissioner.

(4) In any case where the commissioner objects to the proposed new point of access, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on such objections.

(c) (1) Existing points of access to and from state highways from and to real property used for commercial, industrial or mercantile purposes may be reviewed by the commissioner to determine whether such points of access comply with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article. The commissioner may direct reasonable changes in existing points of access to and from state highways from and to property used for commercial, industrial or mercantile purposes if he or she determines from accident reports or traffic surveys that the public safety is seriously affected by such points of access and that such reasonable changes would substantially reduce the hazard to public safety. When such changes require construction, reconstruction or repair, such work shall be done at state expense as any other construction, reconstruction or repair.

(2) If the commissioner makes a preliminary determination that any changes should be made, the following rules apply:

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(A) The commissioner shall reduce his or her preliminary determination to writing and promptly furnish notice of such preliminary determination to the owner or owners of the real property affected and of their right to demand a hearing on the preliminary determination. The commissioner's notice shall include a description of suggested changes suitable for reducing the hazard to the public safety.

(B) In any case where the commissioner makes a preliminary determination that any changes should be made, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on the preliminary determination.

(d) For points of access existing on or before July 1, 2016, to and from state highways from and to real property used for commercial, industrial or mercantile purposes if the access is more than fifty feet wide, the access is along a state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to heavy traffic or other circumstances, the commissioner shall either place “no parking” signs at each side of the driveway entrance fronting the state highway or clearly mark that right-of-way with yellow paint with the words "no parking" or both to provide notice that parking is prohibited.

(e) For points of access approved by the commissioner after July 1, 2016, to and from state highways from and to real property used for commercial, industrial or mercantile purposes if the access is more than fifty feet wide, the access is along a state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to heavy traffic or other circumstances, the owner or owners of the real property shall be required to place “no parking” signs at each side of the driveway entrance fronting the state highway or clearly mark that right-of-way with yellow paint with the words "no parking" or both to provide notice that parking is prohibited. This subsection and subsection (d) of this section shall be known as "Sarah Nott's Law".

WV Legislature

§17-4-50. Same -- Commissioner's authority as to subdivisions abutting state highway; notice of proposal to subdivide; filing, approval or disapproval of subdivision plans.

(A) In addition to other authority granted the commissioner to control access to state highways, the commissioner shall have authority in regard to the subdividing of land, any part of which abuts upon a state highway, as provided in this section.

(B) For purposes of this section, the following terms have the following meanings:

(1) "Lot" means an identified area of land one acre or less in size.

(2) "Subdividing" means the dividing, laying out or separating of five or more lots from or within a parcel of land or a successive dividing, laying out or separating of lots resulting in the creation of five or more lots within a parcel of land within five years.

(3) "Subdivision plan" means a graphic representation of a parcel of land showing the lots therein and any other relevant natural or man-made topographical feature.

(4) "Parcel" means an identified area of land owned by a person or owned by a combination of persons jointly or in common; or more than one identified area of land where such areas are contiguous and the owners act in concert in relation to such land.

(C) Subdividing occurs and a subdivision results within the meaning of this section whenever:

(1) A person subdivides five or more lots from a parcel at one time; or

(2) A successive division of lots out of a parcel results in the separation of the fifth or subsequent lot within a five- year period; or

(3) A person divides a parcel into tracts of land larger than a lot knowing, or having reason to know, that such parcels will in turn be divided or separated into a total of five or more lots.

(D) The remedies provided by this section shall not apply to lots which became such prior to the effective date of this section, but such lots may be considered in determining when an act of subdividing occurs after the effective date of this section, and in reviewing subdivision plans and applying remedies to lots which became such after the effective date of this section.

(E) The subdivision plans of the subdividing of any land, a part of which abuts on a state highway, shall be submitted to the state road commissioner directly, and the following rules shall apply:

(1) Notice of the proposal to subdivide shall be filed with the commissioner, along with a

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plan of the proposed subdivision.

(2) The commissioner shall review the plan to insure compliance with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article.

(3) The commissioner shall reduce his objections to the proposed point of access to and from the state highway from and to the real property that is to be subdivided into lots, if any, to writing and promptly furnish notice of such objections to the person proposing such subdivision and of his right to demand a hearing thereon. A subdivision plan not so objected to within six weeks from the time it is filed with the commissioner shall be deemed to have been approved by the commissioner.

(4) In any case where the commissioner so objects to the proposed access to and from a new subdivision plan, the person submitting such plan shall have reasonable opportunity for a hearing on such objections.

(F) A subdivision is deemed disapproved if it was not submitted to the commissioner for review under the provisions of this section or if the commissioner has made timely objection to such plan and such objections have not been withdrawn. Disapproval shall have the following effect:

(1) The commissioner may post signs upon the adjacent highway right-of-way stating that the subdivision is disapproved, that access to and from lots in such subdivision from and to the state highway is not allowed, and any other relevant information deemed by the commissioner necessary to warn the public of such disapproval and its effect; and

(2) The commissioner shall have authority to limit access to and from such subdivision as a whole from and to the state highway to such access as would have been reasonable before the land was subdivided and to prevent and prohibit any other access to and from the state highway from and to such subdivision.

WV Legislature

§17-4-51. Same -- Amendment or withdrawal of objections or preliminary determinations by commissioner; delegation of authority by commissioner.

(a) The state road commissioner may revise, amend or withdraw any objections issued by him and any preliminary determinations made by him under sections forty-seven, forty-eight, forty-nine or fifty of this article upon reasonable notice to the owner or owners of the property affected or to the person submitting a subdivision plan.

(b) The commissioner may delegate the authority to make, revise, amend and withdraw objections and preliminary determinations and hold hearings required or authorized under this section and sections forty-seven, forty-eight, forty-nine and fifty of this article.

WV Legislature

§17-4-52. Same -- Requirements for objections, preliminary determinations and notices.

(a) All objections and preliminary determinations made pursuant to sections forty-seven, forty-eight, forty-nine and fifty of this article, and all notices required to be given pursuant to sections forty-seven, forty-eight, forty-nine, fifty and fifty-one of this article, shall be in writing. All such objections and preliminary determinations shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice.

(b) Notice of any preliminary determination or objection required or authorized by sections forty-seven, forty-eight, forty-nine or fifty of this article shall be given by causing such notice to be delivered to the owner or owners of the real property affected or by causing a copy thereof to be sent by certified or registered mail to such owner or owners at his or their last-known place of business or residence.

WV Legislature

§17-4-53. Same -- Appeals from and judicial review of determinations and final orders of commissioner.

(a) Any objection or preliminary determination issued by the state road commissioner under sections forty-seven, forty- eight, forty-nine or fifty of this article shall be subject to judicial review by the circuit court of the county in which the real property affected is located, or the circuit court of Kanawha county, upon the filing in such court or with the judge thereof in vacation, of a petition for appeal by the owner or owners aggrieved by such objection or preliminary determination, within thirty days from the date of the giving of notice of such objection or preliminary determination.

(b) The owner or owners making such appeal shall forthwith send a copy of such petition for appeal, by certified or registered mail, to the state road commissioner. Upon receipt of such copy of such petition for appeal the state road commissioner shall promptly certify and file in such court a complete transcript of the record upon which the preliminary determination or objection complained of was made. The costs of such transcript shall be paid by the commissioner.

(c) The court sitting in lieu of a jury, or judge thereof in vacation, shall, after due notice, conduct a hearing on the issues presented by such appeal and shall permit argument, oral or written or both, by the parties. The court shall permit such pleadings, in addition to the pleadings before the state road commissioner, as it deems to be required. Evidence relating to the making of the objection or preliminary determination complained of and relating to the questions raised by the allegations of the pleadings or other questions pertinent in the proceeding may be offered by the parties to the proceeding.

(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, any circuit court to which an appeal has been made as provided in this section, may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of the objection or final determination of the state road commissioner or to grant such other relief as may be appropriate pending final determination.

(e) A circuit court to which an appeal has been made as provided in this section, may affirm, annul or revise the objection or preliminary determination of the state road commissioner, or it may remand the proceeding to the state road commissioner for such further action as it directs.

(f) The decision of the circuit court on an appeal from the state road commissioner shall be final, subject only to review by the Supreme Court of Appeals of West Virginia upon a petition for certiorari filed in such court within sixty days from the entry of an order and decision of the circuit court upon such appeal from the state road commissioner.

WV Legislature

§17-4-54. Location of trash and garbage collection containers by counties and municipalities.

(a) The commissioner of the department of highways is authorized to issue permits to counties and municipalities for the location of containers on rights-of-way of state maintained roads and highways for the collection of trash and garbage: Provided, That by the issuance of these permits, counties and municipalities will not be in direct competition with private common carriers. Private common carriers are carriers that are regulated by the Public Service Commission. Such containers may be located on road and highway rights-of-way only when authorized in writing by the commissioner or his agent in accordance with rules promulgated by the commissioner in accordance with chapter twenty-nine-a of this code. Such rules shall take into consideration the safety of travelers on the roads and highways of this state and the elimination of unsightly conditions and health hazards. Such containers may not be located on controlled-access or interstate highways.

(b) The written authority given by the commissioner is no guarantee that the state is the owner of the land upon which a container is to be located and if any question exists concerning ownership of such land, the issuance of such written authority may not be granted until the county or municipality certifies that written permission to locate the container has been obtained from any person claiming an interest in the land if such person's whereabouts can be determined.

(c) Whenever any county or municipality fails to comply with the rules promulgated by the commissioner or of any order of the commissioner for the removal or relocation of a container, the permit for such container shall be revoked and, if not removed by the county or municipality, the commissioner may remove such container and charge the expense of removal to the county or municipality failing to comply with the rules or order of the commissioner.

WV Legislature

§17-4-55. Rest area, welcome center, road, and vehicle commercial sponsorship program.

(a) The Division of Highways shall undertake a study of the feasibility of implementing a program to facilitate commercial sponsorship of rest areas, welcome centers, roads, and vehicles owned or leased by the Division of Highways to help offset the costs of the operation and maintenance of rest areas, welcome centers, roads, and vehicles.

(b) The Division of Highways shall implement a program to facilitate commercial sponsorship of rest areas, welcome centers, roads, and vehicles owned or leased by the Division of Highways (1) if it is feasible and practicable, in accordance with the study required by subsection (a) of this section, and (2) upon approval of the proposed sponsorship program by the Federal Highway Administration.

(c) Upon implementation of the program, the Division of Highways may enter into sponsorship agreements with private entities in accordance with this section. A sponsorship agreement may allow a private entity to place signs and placards identifying itself as a sponsor of the rest area, welcome center, road or vehicle that is visible to the traveling public in exchange for consideration at fair market value. A sponsorship agreement may include any other provisions the Division of Highways deems necessary. Sponsorship agreements shall comply with all applicable state and federal rules and regulations.

(d) All net revenue received by the Division of Highways from the sponsorship agreements shall be deposited in the State Road Fund.

(e) The Commissioner of the Division of Highways may propose rules for legislative

approval or emergency rules pursuant to §29A-3-1 et seq. of this code to establish and implement the program as may be necessary to carry out the purposes of this section.

(f) On or before December 1, 2018, the Commissioner of the Division of Highways shall

submit a report to the Joint Committee on Government and Finance detailing the status and progress of the feasibility study directed in subsection (a) of this section. If the sponsorship program is implemented, the commissioner shall also report to the Joint Committee on Government and Finance on the status of the sponsorship program.

WV Legislature