

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1941



# ENROLLED

HOUSE BILL No. 72

(By Mr. James)



PASSED March 7 1941

In Effect ninty days from Passage

214#

**ENROLLED**  
**House Bill No. 42**  
(By MR. JANES)

[Passed March 4, 1941; in effect ninety days from passage.]

AN ACT to authorize the state road commission to make settlement with Lee Hill, administrator of Lee Hill, Jr., of a claim against the state road commission of West Virginia.

WHEREAS, That heretofore, to wit, in the lifetime of the said administrator's intestate, on the ninth day of January, one thousand nine hundred thirty-four, and for a long time prior thereto, the said state road commission was legally possessed and had under its control, care, custody and jurisdiction a certain public bridge, not a toll bridge, spanning the Tygarts Valley river, situated in Philippi district of Barbour county, West Virginia, and not within a municipality, commonly known as the "Philippi Old Covered Bridge", being a covered bridge of a part of a public highway connecting sections of West Virginia state route number fifty-six, extending east and west across said river, constructed of wood and having two lanes

of traffic separated by timbers employed in the construction of said bridge, which said bridge was legally within the jurisdiction of the state road commission and with respect to which bridge the state road commission was charged with the superintendence and administration of the construction, reconstruction, repair and maintenance thereof, and over which bridge the administrator's intestate and all other citizens of the state of West Virginia had the right to travel, pass and repass, without hindrance or obstruction, and which it was then and there the legal duty of the said state road commission to put and keep said bridge in good order and repair, and it was the duty of the said state road commission who had assumed the charge of further construction, reconstruction or maintenance of said public bridge under the laws of the state of West Virginia, passed by the said Legislature thereof, to keep the bridge in good order and repair and to keep the same free and clear of holes and obstruction by or on account of which the public, and especially children of tender years, walking and crossing upon and over said bridge and exercising due care and caution for their own safety, might be injured or killed; but the said state road commission not regarding its said duty in that

behalf and while it was so possessed and had control, jurisdiction, care and custody of said bridge on, to wit, the day and year last aforesaid, wrongfully, negligently and carelessly suffered and permitted said public bridge to be and remain in a bad and unsafe condition and out of repair, and that the said state road commission wrongfully, negligently and carelessly, for a long time immediately prior to the date aforesaid, and on the date aforesaid, to wit, the ninth day of January, one thousand nine hundred thirty-four, allowed and permitted a hole to be and remain open and unprotected in the floor of said bridge, and said hole being about two feet long and two and one-half feet wide, and being in the floor on the north side of said bridge near the timbers separating said two lanes of traffic thereon and extending into the north lane of traffic and being about ten feet from the eastern end of said bridge and in that part of said bridge which the public, and especially children of tender years, were wont to use while walking and crossing along and upon said bridge, so as to endanger the public, and especially children of tender years, walking and crossing upon and over said bridge and making the same unsafe and dangerous for travel by the public; and

WHEREAS, Heretofore on the ninth day of January, one thousand nine hundred thirty-four, between the hours of nine o'clock and nine-thirty P. M., the said Lee Hill, Jr., intestate, being then a child of the tender age of eleven years, walked upon and across this certain bridge using the north lane of traffic thereon and exercising all such due care, skill and diligence for his own safety as a child of his age is required to use and exercise, and without negligence on his part, fell into and through the dangerous hole as aforesaid in the floor of said bridge, which the said state road commission had allowed and permitted to be and remain open and unprotected, into the waters of the said Tygarts Valley river, and in consequence thereof and by reason of the carelessness and negligence of the state road commission in permitting said bridge to be and remain out of repair, in a dangerous condition, as aforesaid, the administrator's intestate was then and there killed by said fall or drowned; and

WHEREAS, The administrator aforesaid sued the county court of Barbour county, in the circuit court thereof, in less than one year from the date of said accident and the cause of action was certified to the supreme court of appeals of the state of

West Virginia, and on March twenty-fourth, one thousand nine hundred thirty-six, said court passed upon said cause and rendered its opinion therein, holding that the county court of Barbour county had no jurisdiction over the said bridge and that the state road commission of West Virginia had full and complete authority thereover; and

WHEREAS, The said administrator aforesaid has no redress except to appeal to this august body; therefore,

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

Section 1. *Claim of Lee Hill Against the State.*—The  
2 state road commission is hereby authorized and empow-  
3 ered, in its discretion, to pay to the said Lee Hill, admin-  
4 istrator of Lee Hill, Jr., a sum not to exceed three thousand  
5 dollars, in full settlement and discharge of said claim,  
6 from any moneys available now or hereafter appropri-  
7 ated for such purpose, upon condition that the said Lee  
8 Hill, administrator of Lee Hill, Jr., do execute and de-  
9 liver upon receipt of said sum aforesaid a complete re-  
10 lease from any obligations upon the state of West Vir-  
11 ginia.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. H. McKeown

Chairman Senate Committee

Leon Rice

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Atale Watkins

Clerk of the Senate

J. Kiliff

Clerk of the House of Delegates

Byron Raulof

President of the Senate

Malcolm R. Arnold

Speaker House of Delegates

The within approved this the 4<sup>th</sup>  
day of March, 1941.

Matthew M. Neely,

Governor.

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Filed in the office of the Secretary of State  
of West Virginia. MAR 17 1941

Wm. S. O'BRIEN,  
Secretary of State