

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

SENATE BILL NO. 10

Carson (Mr. President)
(By Mr. *and Mr. Smith*)

PASSED March 9, 1963

In Effect ready for Passage

Filed in Office of the Secretary of State
of West Virginia 3-16-63

JOE F. BURDETT
SECRETARY OF STATE

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ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 10

[Passed March 9, 1963; in effect ninety days from passage.]

AN ACT to amend article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto seven new sections, to be designated sections forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two and fifty-three, relating to the control and regulation of access from commercial, industrial and mercantile real property and from real property subdivided into lots to state highways.

Be it enacted by the Legislature of West Virginia:

That article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto seven new sections, to be desig-

nated sections forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two and fifty-three, to read as follows:

Section 47. Access and Control of Access from Commercial, Industrial and Mercantile Real Property and from Real Property Subdivided into Lots to State Highways Generally.—(a) Access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes or from and to real property that is subdivided into lots is a matter of public concern and shall be regulated by the state road commissioner 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; and

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

(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

20 property abutting upon any existing state highway has
21 a right of reasonable means of ingress to and egress from
22 such state highway consistent with those policies ex-
23 pressed in subsection (a) of this section and any regula-
24 tions issued by the commissioner under section forty-
25 eight of this article.

26 (c) If the construction, relocation, or reconstruction of
27 any state highway, to be paid for in whole or in part
28 with federal or state road funds, results in the abutment
29 of real property as defined in subsection (a) of this sec-
30 tion on such state highway that did not previously abut
31 on it, no rights of direct access shall accrue because of
32 such abutment, but the commissioner may authorize and
33 limit access, if any, from such property compatible with
34 the policies stated in subsection (a) of this section and
35 any regulations issued by the commissioner under section
36 forty-eight of this article.

37 (d) The policies expressed in this section are appli-
38 cable to state highways generally and shall in no way
39 limit the authority of the state road commissioner to
40 establish controlled-access facilities under the provisions

41 of sections thirty-nine through forty-six of this article.

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

Sec. 48. Access Regulations.—The state road commis-
2 sioner is hereby authorized to issue reasonable regulations
3 specifying standards for the location, design and con-
4 struction of access facilities to state highways and any
5 other regulations necessary to carry out the policies
6 stated in section forty-seven of this article. Such regu-
7 lations may be based upon any or all of the following:

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

10 (b) Studies, surveys or reports made for the commis-
11 sioner or for any other governmental agency; or

12 (c) Any other data deemed relevant by the commis-
13 sioner. Regulations affecting access previously issued by
14 the commissioner or the state road commission shall con-
15 tinue in effect until altered or withdrawn by the com-
16 missioner.

Sec. 49. Unauthorized Commercial, Industrial and Mercantile Access Prohibited; New and Existing Points of Access; Remedies.—(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 shall be opened, constructed or maintained without first complying with the provisions of this section and sections forty-seven and forty-eight of this article. Access points opened, constructed or maintained without such compliance are deemed unauthorized.

(b) Plans of any such new point of access shall be submitted to the state road commissioner 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 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

22 the proposed new point of access, if any, to writing and
23 promptly furnish notice of such objection to the owner
24 or owners of the real property affected and of their
25 right to demand a hearing thereon. A plan not so ob-
26 jected to within six weeks from the time it is filed with
27 the commissioner shall be deemed to have been approved
28 by the commissioner.

29 (4) In any case where the commissioner so objects
30 to the proposed new point of access, the owner or owners
31 of the real property affected shall have reasonable oppor-
32 tunity for a hearing on such objections.

33 (c) (1) Existing points of access to and from state
34 highways from and to real property used for commercial,
35 industrial or mercantile purposes may be reviewed by
36 the commissioner to determine whether such points of
37 access comply with the policies stated in section forty-
38 seven of this article and with any regulations issued
39 by the commissioner under section forty-eight of this
40 article. The commissioner may direct reasonable changes
41 in existing points of access to and from state highways
42 from and to property used for commercial, industrial or

43 mercantile purposes if he determines from accident re-
44 ports or traffic surveys that the public safety is seriously
45 affected by such points of access and that such reasonable
46 changes would substantially reduce the hazard to public
47 safety. When such changes require construction, recon-
48 struction or repair, such work shall be done at state ex-
49 pense as any other construction, reconstruction or repair.

50 (2) If the commissioner makes a preliminary deter-
51 mination that any such changes should be made, the fol-
52 lowing rules shall apply:

53 (a) The commissioner shall reduce his preliminary de-
54 termination to writing and promptly furnish notice of
55 such preliminary determination to the owner or owners
56 of the real property affected and of their right to demand
57 a hearing thereon. Such notice shall include a descrip-
58 tion of suggested changes deemed by the commissioner
59 suitable to reduce the hazard to the public safety.

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

Sec. 50. Subdivision Control for Access Regulation.—

2 (A) In addition to other authority granted the commis-
3 sioner to control access to state highways, the commis-
4 sioner shall have authority in regard to the subdividing
5 of land, any part of which abuts upon a state highway,
6 as provided in this section.

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

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

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

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

20 (4) "Parcel" means an identified area of land owned
21 by a person or owned by a combination of persons jointly

22 or in common; or more than one identified area of land
23 where such areas are contiguous and the owners act in
24 concert in relation to such land.

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

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

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

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

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

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

47 (1) Notice of the proposal to subdivide shall be filed
48 with the commissioner, along with a plan of the proposed
49 subdivision.

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

54 (3) The commissioner shall reduce his objections to
55 the proposed point of access to and from the state high-
56 way from and to the real property that is to be sub-
57 divided into lots, if any, to writing and promptly furnish
58 notice of such objections to the person proposing such
59 subdivision and of his right to demand a hearing thereon.

60 A subdivision plan not so objected to within six weeks
61 from the time it is filed with the commissioner shall be
62 deemed to have been approved by the commissioner.

63 (4) In any case where the commissioner so objects to

64 the proposed access to and from a new subdivision plan,
65 the person submitting such plan shall have reasonable
66 opportunity for a hearing on such objections.

67 (F) A subdivision is deemed disapproved if it was not
68 submitted to the commissioner for review under the pro-
69 visions of this section or if the commissioner has made
70 timely objection to such plan and such objections have
71 not been withdrawn. Disapproval shall have the follow-
72 ing effect:

73 (1) The commissioner may post signs upon the ad-
74 jacent highway right of way stating that the subdivision
75 is disapproved, that access to and from lots in such sub-
76 division from and to the state highway is not allowed,
77 and any other relevant information deemed by the com-
78 missioner necessary to warn the public of such disapproval
79 and its effect;

80 (2) The commissioner shall have authority to limit
81 access to and from such subdivision as a whole from and
82 to the state highway to such access as would have been
83 reasonable before the land was subdivided and to prevent
84 and prohibit any other access to and from the state high-
85 way from and to such subdivision.

Sec. 51. Commissioner May Amend or Withdraw Any

2 Objections or Preliminary Determinations; Commissioner

3 May Delegate Authority.—(a) The state road commis-

4 sioner may revise, amend or withdraw any objections

5 issued by him and any preliminary determinations made

6 by him under sections forty-seven, forty-eight, forty-

7 nine or fifty of this article upon reasonable notice to the

8 owner or owners of the property affected or to the person

9 submitting a subdivision plan.

10 (b) The commissioner may delegate the authority to

11 make, revise, amend and withdraw objections and pre-

12 liminary determinations and hold hearings required or

13 authorized under this section and sections forty-seven,

14 forty-eight, forty-nine and fifty of this article.

Sec. 52. Objections and Preliminary Determinations

2 and Notices.—(a) All objections and preliminary determ-

3 inations made pursuant to sections forty-seven, forty-

4 eight, forty-nine and fifty of this article, and all notices

5 required to be given pursuant to sections forty-seven,

6 forty-eight, forty-nine, fifty and fifty-one of this article,

7 shall be in writing. All such objections and preliminary

8 determinations shall be signed by the person making
9 them, and all such notices shall be signed by the person
10 charged with the duty of giving the notice.

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

Sec. 53. Judicial Review of Determinations and Final
2 **Orders of the State Road Commissioner.**—(a) Any objec-
3 tion or preliminary determination issued by the state road
4 commissioner under sections forty-seven, forty-eight,
5 forty-nine or fifty of this article shall be subject to judicial
6 review by the circuit court of the county in which the real
7 property affected is located, or the circuit court of Kana-
8 wha county, upon the filing in such court or with the judge
9 thereof in vacation, of a petition for appeal by the owner
10 or owners aggrieved by such objection or preliminary

11 determination, within thirty days from the date of the
12 giving of notice of such objection or preliminary de-
13 termination.

14 (b) The owner or owners making such appeal shall
15 forthwith send a copy of such petition for appeal, by
16 certified or registered mail, to the state road commissioner.
17 Upon receipt of such copy of such petition for appeal the
18 state road commissioner shall promptly certify and file
19 in such court a complete transcript of the record upon
20 which the preliminary determination or objection com-
21 plained of was made. The costs of such transcript shall
22 be paid by the commissioner.

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

32 of the pleadings or other questions pertinent in the
33 proceeding may be offered by the parties to the pro-
34 ceeding.

35 (d) Upon such conditions as may be required and to
36 the extent necessary to prevent irreparable injury, any
37 circuit court to which an appeal has been made as pro-
38 vided in this section, may, after due notice to and hearing
39 of the parties to the appeal, issue all necessary and ap-
40 propriate process to postpone the effective date of the
41 objection or final determination of the state road com-
42 missioner or to grant such other relief as may be appro-
43 priate pending final determination.

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

50 (f) The decision of the circuit court on an appeal from
51 the state road commissioner shall be final, subject only
52 to review by the supreme court of appeals of West Vir-

53 ginia upon a petition for certiorari filed in such court
54 within sixty days from the entry of the order and de-
55 cision of the circuit court upon such appeal from the
56 state road commissioner.

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

O. Ray Parker

Chairman Senate Committee

Ethel C. Crandall

Chairman House Committee

Originated in the Senate.

Takes effect

from

passage.

Howard Hughes

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Howard W. Carson

President of the Senate

John W. Eighlston

Speaker House of Delegates

The within

approved

this the

16th

day of

March

, 1963.

W. W. Barron

Governor

