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 90 days from Passage

Filed in Office of the Secretary of State
of West Virginia 3-16-63
JOE P. BURDETT
SECRETARY OF STATE
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-
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ated 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
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 such state highway that did not previously abut on it, no rights of direct access shall accrue because of such abutment, but the commissioner may authorize and limit access, if any, from such property compatible with the policies stated in subsection (a) of this section and any regulations issued by the commissioner under 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 state road commissioner to establish controlled-access facilities under the provisions
of sections thirty-nine through forty-six of this article.

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

Sec. 48. Access Regulations.—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.
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
the proposed new point of access, if any, to writing and
promptly furnish notice of such objection to the owner
or owners of the real property affected and of their
right to demand a hearing thereon. A plan not so ob-
jected 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 new point of access, the owner or owners
of the real property affected shall have reasonable oppor-
tunity 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 determines from accident re-
ports 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, recon-
struction or repair, such work shall be done at state ex-
pense as any other construction, reconstruction or repair.

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

(a) The commissioner shall reduce his preliminary de-
termination 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 thereon. Such notice shall include a descrip-
tion of suggested changes deemed by the commissioner
suitable to reduce the hazard to the public safety.

(b) In any case where the commissioner makes a
preliminary determination that any such changes should
be made, the owner or owners of the real property affected
shall have reasonable opportunity for a hearing on such
preliminary determination.
Sec. 50. Subdivision Control for Access Regulation.—

(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 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 pro-
visions 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 follow-
ing effect:

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

(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 high-
way from and to such subdivision.
Sec. 51. Commissioner May Amend or Withdraw Any Objections or Preliminary Determinations; Commissioner May Delegate Authority.—(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.

Sec. 52. Objections and 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.

Sec. 53. Judicial Review of Determinations and Final Orders of the State Road 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
11 determination, within thirty days from the date of the
giving of notice of such objection or preliminary de-
termination.

(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.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 16th day of March, 1963.

Governor