

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

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**ENROLLED**

COM. SUB. FOR  
SENATE BILL NO. 44

(By Mr.....)

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PASSED March 9..... 1963

In Effect From..... Passage



Filed in Office of the Secretary of State  
of West Virginia 3-15-63  
JOE F. BURDETT  
SECRETARY OF STATE

44 #

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COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 44**

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

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AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section three, article one thereof; and sections seven, thirteen and fifteen, article two-a thereof; by adding to article two-a thereof eight new sections, designated sections four-a, four-b, eight-a, eight-b, seventeen, eighteen, nineteen and twenty; by amending and reenacting section four, article three thereof; by adding to article three thereof a new section, designated section four-a; by amending and reenacting sections nine, ten, eleven, twenty-one, twenty-six, twenty-nine, thirty and thirty-one, article four thereof, all relating to the improvement, administration and supervision of the state system

of roads and highways; including, among other things, definitions of roads and highways, the purchase of materials for the state road program, the acquisition of property for the state road commission, advance payments into court by the state road commission in condemnation actions, the disposal of state road commission real property, payment of traveling expenses of prospective employees and moving expenses of new employees, educational training for present and prospective highway personnel, allowance to expert witnesses in eminent domain proceedings, emergency towing and fuel for stalled vehicles, assistance to persons dislocated by highway construction, elimination or avoidance of railway-highway crossings at grade, relocation of utility lines, and protest against, hearing on, and judicial review of order directing the separation or elimination of grades.

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

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting section three, article one thereof; and sections seven, thirteen and fifteen, article two-a thereof;

by adding to article two-a thereof eight new sections, designated sections four-a, four-b, eight-a, eight-b, seventeen, eighteen, nineteen and twenty; by amending and reenacting section four, article three thereof; by adding to article three thereof a new section, designated section four-a; by amending and reenacting sections nine, ten, eleven, twenty-one, twenty-six, twenty-nine, thirty and thirty-one, article four thereof, all to read as follows:

**Article 1. Definitions.**

**Section 3. Road; Public Road; Highway.**—The words or  
2 terms “road,” “public road,” or “highway,” shall be  
3 deemed to include, but shall not be limited to, the right of  
4 way, roadbed and all necessary culverts, sluices, drains,  
5 ditches, waterways, embankments, slopes, retaining walls,  
6 bridges, tunnels and viaducts necessary for the mainte-  
7 nance of travel, dispatch of freight and communication  
8 between individuals and communities; and such public  
9 road or highway shall be taken to include any road to  
10 which the public has access and which it is not denied  
11 the right to use, or any road or way leading from any  
12 other public road over the land of another person, and

13 which shall have been established pursuant to law. Any  
14 road shall be conclusively presumed to have been estab-  
15 lished when it has been used by the public for a period  
16 of ten years or more, and public moneys or labor have  
17 been expended thereon, whether there be any record of  
18 its conveyance, dedication or appropriation to public use  
19 or not. In the absence of any other mark or record, the  
20 center of the traveled way shall be taken as the center of  
21 the road and the right of way shall be designated there-  
22 from an equal distance on each side, but a road may be  
23 constructed on any part of the located right of way when  
24 it is deemed advisable so to do.

**Article 2-a. State Road Commissioner.**

**Section 4-a. Payment of Traveling Expenses of Pros-**  
2 **pective Employees and Moving Expenses of New Em-**  
3 **ployees.**—In addition to the other powers given and as-  
4 signed to him in this chapter, the commissioner may au-  
5 thorize the payment of the traveling expenses incurred  
6 by any person he requests to visit his office to be inter-  
7 viewed concerning the possible employment of such per-  
8 son by the state road commission. When a person is first

9 employed by the commission, the commissioner may au-  
10 thorize the payment of all or part of the expense incurred  
11 by such person in moving his household effects to his  
12 place of employment. The expenditures for such pay-  
13 ments shall be made from the state road fund.

**Sec. 4-b. Scholarships for Training Highway Personnel;**

**2 Notes for Money Advanced; Payment or Cancellation of**

**3 Notes.**—The Legislature hereby declares that there is a  
4 wide and continuing need for trained personnel in the  
5 state road commission of this state and that the scholar-  
6 ships herein provided will aid the state road commission  
7 in attracting and holding competent employees.

8 The state road commissioner is empowered to award  
9 scholarships to competent persons, whether presently  
10 employed by the state road commission or not, for the  
11 purpose of enabling and encouraging such persons to at-  
12 tend a college or university to pursue such course of study  
13 as may be approved by the state road commissioner, but  
14 the number of persons holding such scholarships at any  
15 one time shall not exceed twelve. Each scholarship shall  
16 carry a stipend in an amount fixed by the state road com-

17 missioner not in excess of four thousand dollars in the  
18 aggregate, such sum to be paid to the recipient in equal  
19 installments at the beginning of each quarter or semester  
20 for which the recipient has agreed to pursue his course of  
21 study. The necessary expenditures for such scholarships  
22 shall be made from the funds available to the state road  
23 commission. The recipient of a scholarship shall execute  
24 notes and shall deliver said notes to the state road com-  
25 missioner. Each such note shall be in the amount of the  
26 sum received from the state road fund and shall be pay-  
27 able on demand to the state treasurer. The state road  
28 commissioner shall hold said notes and if, for any reason,  
29 except death or physical or mental disability, or being  
30 drafted into the armed services, the recipient of a scholar-  
31 ship fails successfully to complete the course of study  
32 for which the scholarship was granted or if after the  
33 completion of the prescribed course of study does not  
34 continue or become an employee of the state road com-  
35 mission, or ceases to be an employee before all such notes  
36 have been paid or cancelled, the state road commissioner  
37 shall make demand for payment of all of said unpaid and

38 uncanceled notes and shall transmit all such notes  
39 promptly to the state treasurer who shall enforce collec-  
40 tion thereon and shall deposit such sums so collected  
41 thereon in the state road fund. The state road commis-  
42 sioner is authorized to credit the oldest outstanding note  
43 in the sum of four hundred dollars every six months that  
44 the recipient of the scholarship is employed by the state  
45 road commission after having completed the course of  
46 study for which the scholarship was granted. The state  
47 road commissioner shall have the power and authority  
48 to make all necessary rules and regulations to carry this  
49 section into effect.

**Sec. 7. Legal Services.**—Notwithstanding any law to  
2 the contrary, the commissioner:

3 (1) Shall select and employ a competent legal staff ade-  
4 quate for the ordinary legal services required by him  
5 and shall provide therefor such quarters, equipment,  
6 facilities, services and stenographic and other personnel  
7 as may be necessary;

8 (2) May call upon the attorney general and the prose-  
9 cuting attorneys of the several counties, within their re-

10 spective jurisdictions, for legal assistance and services as  
11 provided by law;

12 (3) May employ such additional legal counsel as he  
13 deems necessary upon a reasonable fee basis to perform  
14 legal services in acquiring, by right of eminent domain  
15 or otherwise, property, or an estate, right or interest  
16 therein.

**Sec. 8-a. Expert Witnesses in Eminent Domain Pro-**  
2 **ceedings.**—Notwithstanding any law to the contrary, the  
3 commissioner may employ as witnesses to testify in  
4 eminent domain proceedings such persons who are quali-  
5 fied to give competent testimony as to the value of the  
6 property, or estate, right or interest therein, being con-  
7 demned in an eminent domain proceeding, as he deems  
8 necessary. Each such person so employed shall receive  
9 for his services the sum agreed upon in a written con-  
10 tract signed by the commissioner and such person. The  
11 sum contracted to be paid, however, shall not be made  
12 contingent upon the outcome of the action or hearing in  
13 which the competent testimony is to be given.

**Sec. 8-b. Emergency Road Service.**—In addition to the

2 other powers given and assigned to him in this chapter,  
3 where an emergency exists, the commissioner may au-  
4 thorize the use of state road commission vehicles to pro-  
5 vide towing service to vehicles stranded on any highway  
6 in this state, or may provide a sufficient quantity of  
7 gasoline or other fuel for the vehicle to propel it to a  
8 point where such fuel may be purchased.

**Sec. 13. Purchase of Materials, Supplies and Equip-**  
2 **ment.**—All materials, supplies and equipment required  
3 for the state road program and system shall be purchased  
4 and acquired by the commissioner through the depart-  
5 ment of purchases, except as otherwise provided by law.  
6 The director of purchases shall adopt rules and regula-  
7 tions governing and controlling acquisitions and pur-  
8 chases in accordance with accepted business practices so  
9 that no persons shall be precluded from participating and  
10 making sales thereof to the commission; shall establish  
11 and prescribe specifications, in all proper cases, for ma-  
12 terials, supplies and equipment to be purchased; shall  
13 adopt and prescribe such purchase order, requisition or  
14 other forms as may be required; shall negotiate for and

15 make purchases and acquisitions in such quantities, at  
16 such times and under contract, in the open market or  
17 through other accepted business methods and practices,  
18 as may be practicable in accordance with general law;  
19 shall determine whether to advertise for bids, to purchase  
20 by means of sealed bids and competitive bidding or to  
21 effect advantageous purchases through other accepted  
22 methods and practices; and shall post in a public place in  
23 the offices of the commission and the department of pur-  
24 chases, available to the public during all business hours,  
25 notices of all acquisitions and purchases to be made, at  
26 least two weeks prior to making such purchases.

27 All purchases and acquisitions shall be made in con-  
28 sideration and within limits of available appropriations  
29 and funds and in accordance with applicable provisions of  
30 article two, chapter five-a of this code, relating to ex-  
31 penditure schedules and quarterly allotments of funds.

32 The director of purchases shall make available the  
33 facilities and services of his department to the commis-  
34 sioner in the purchase and acquisition of materials, sup-  
35 plies and equipment and shall cooperate with the com-

36 missioner in all such purchases and acquisitions upon  
37 request of the commissioner. The actual expenses in-  
38 curred by the director of purchases in all such cases shall  
39 be paid by the commissioner.

**Sec. 15. Other Laws Not Controlling.**—The provisions  
2 of article three, chapter five-a of this code shall not con-  
3 trol or govern the purchase, acquisition or disposition of  
4 any equipment, materials or supplies by the commis-  
5 sioner, except as provided in sections thirteen and four-  
6 teen of this article. The commissioner may, in his discre-  
7 tion, resort to applicable provisions of said chapter five-a  
8 and to rules, regulations and practices of the director of  
9 purchases in purchasing, acquiring or disposing of equip-  
10 ment, supplies and materials.

**Sec. 17. Acquisition of Property for State Road Pur-  
2 poses.**—In addition to all other powers given and assigned  
3 to the commissioner in this chapter, the commissioner  
4 may acquire, either temporarily or permanently, in the  
5 name of the state road commission, all real or personal  
6 property, public or private, or any interests or rights  
7 therein, including any easement, riparian right, or right

8 of access, deemed by the commissioner to be necessary for  
9 present or presently foreseeable future state road pur-  
10 poses by gift, lease, grant, bequest, devise, agreement,  
11 purchase, exchange, right of eminent domain, or other  
12 lawful means. Such real property may be acquired in  
13 fee simple or in any lesser estate or interest therein, ex-  
14 cept in the case of a public road the right of way only  
15 shall be acquired. Acquisition of such personal property  
16 shall be subject to the provisions of sections thirteen and  
17 fifteen of this article. Nothing in this section shall be  
18 deemed to restrict or relinquish any right the state or  
19 any agency thereof now or hereafter possesses or may  
20 exercise by virtue of the police power or other lawful  
21 authority.

22 As used in this article, "state road purposes" shall in-  
23 clude provision for, but shall not be limited to, the fol-  
24 lowing:

25 (a) Constructing, establishing, laying out, widening,  
26 enlarging, extending, straightening, reconstructing, re-  
27 locating, grading, altering, improving, and maintaining  
28 state roads;

29 (b) Rights of way for state roads, including those  
30 needed for such roads within municipalities, such rights  
31 of way to be as wide as deemed necessary by the com-  
32 missioner;

33 (c) Adequate drainage of state roads;

34 (d) Controlled-access facilities, as defined in section  
35 thirty-nine, article four, of this chapter, including exist-  
36 ing and vested rights of access, air, view and light,  
37 whether privately or publicly owned, and local service  
38 roads to controlled-access facilities;

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

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

48 (g) The culture and support of trees which benefit any

49 state road by aiding in the maintenance and preservation  
50 of the road;

51 (h) Preservation of scenic places and other objects of  
52 attraction or scenic value adjacent to or near any state  
53 road, or which may be conveniently reached from or by  
54 a state road;

55 (i) Development and maintenance of parking places,  
56 auto camps, camp sites, roadside parks, forest or timbered  
57 areas or other places of attraction and scenic value which  
58 are adjacent to or near any state road and which in the  
59 judgment of the commissioner are necessary for the con-  
60 venience of the public and will contribute to the general  
61 welfare and pleasure of the motoring public or road  
62 users;

63 (j) Maintenance of an unobstructed view of any por-  
64 tion of any state road in order to provide for the safety  
65 of the traveling public;

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

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

70 (m) Elimination or prevention of hazardous or un-  
71 desirable points of entry to state roads from adjacent  
72 property;

73 (n) Acquisition of property, or any interest or right  
74 therein, for the purpose of exchanging it for other prop-  
75 erty, or any interest or right therein, which the commis-  
76 sion is authorized to acquire by the other provisions of  
77 this section: *Provided*, That such substitute property, or  
78 any interest or right therein, may be acquired by the  
79 commissioner by condemnation only if the following con-  
80 ditions are satisfied: (1) money compensation would be  
81 substantially inadequate for the property, or interest or  
82 right therein, which the commissioner is authorized to  
83 acquire by the other provisions of this section, and (2)  
84 the commission has entered into a written agreement to  
85 exchange the substitute property, or the right or interest  
86 therein, for the property, or right or interest therein,  
87 which is needed for state road purposes, regardless of  
88 whether the person who has agreed to accept the ex-  
89 change has the right to condemn the substitute property,  
90 or the right or interest therein.

91 (o) Acquisition of real property, not needed as such  
92 for a state road, for the purpose of moving and relocating  
93 thereon a building or other structure or appurtenance  
94 which is situated on a lot or tract of land all or a portion  
95 of which is needed for a state road and which, after re-  
96 location, will be suitable for the purpose for which it was  
97 used prior to its being relocated: *Provided, however,*  
98 That such additional real property may be acquired by  
99 the commissioner by condemnation only if the following  
100 conditions are satisfied: (1) the building or other struc-  
101 ture or appurtenance is of substantial value, (2) the real  
102 property on which it is to be relocated is not substantially  
103 improved and is adjacent to or near the location from  
104 which it is to be removed, (3) the owner of the real  
105 property needed for the state road has entered into a  
106 written agreement with the commission to accept in ex-  
107 change the additional property with the relocated build-  
108 ing or structure or appurtenance thereon, (4) substantial  
109 savings in expenditure of state road funds will result  
110 from condemning the additional property and relocating  
111 the building or structure or appurtenance rather than

112 condemning the lot or tract, or the portion thereof, on  
113 which the building or other structure or appurtenance  
114 may be located; and (5) the real property with the re-  
115 located building or structure or appurtenance thereon  
116 will be relatively equal in value to the real property  
117 needed for the state road.

**Sec. 18. Acquisition of Real Property Not Needed for  
2 Road Purposes.**—In connection with the acquisition of  
3 real property, or any interest or right therein, for state  
4 road purposes, the commissioner may acquire, by any  
5 lawful means other than by eminent domain or condemna-  
6 tion, an entire lot, block, or tract of real property, or any  
7 portion thereof, even though it is not needed for present  
8 or presently foreseeable future state road purposes, if  
9 uneconomic remnants would be left the owner or if sev-  
10 erance or consequential damages to the remainder make  
11 acquisition of the additional property more economical to  
12 the state.

**Sec. 19. Sale, Exchange, or Lease of Real Property.**—  
2 The state road commission, subject to the conditions here-  
3 in, may sell, exchange, or lease real property, or any

4 interest or right therein, held by the state road commis-  
5 sion.

6 When the real property, or any interest or right therein,  
7 is being held for future road purposes, it may be leased.

8 When the real property, or any part thereof, or any in-  
9 terest or right therein, is deemed by the commissioner  
10 not necessary, or desirable for present or presently fore-  
11 seeable future state road purposes, it may be exchanged  
12 for other real property, or any interest or right therein,  
13 deemed by the commissioner to be necessary or desirable  
14 for present or presently foreseeable future state road pur-  
15 poses, or it may be sold. In addition the commission may  
16 exchange real property, or any part thereof, or any in-  
17 terest or right therein, even though it may be necessary  
18 or desirable for present or presently foreseeable future  
19 state road purposes, if the exchange is made for other real  
20 property, or any interest or right therein, in close prox-  
21 imity thereto which the commissioner deems of equal or  
22 superior useful value for present or presently foreseeable  
23 future state road purposes. In making exchanges the com-  
24 mission may make allowances for differences in the value

25 of the properties being exchanged and may move or pay  
26 the cost of moving buildings, structures, or appurtenances  
27 in connection with the exchange.

28 Every such sale of real property, or any interest or right  
29 therein or structure thereon, shall be at public auction in  
30 the county in which the real property, or the greater part  
31 thereof in value, is located, and the commission shall ad-  
32 vertise, by publication or otherwise, the time, place, and  
33 terms of such sale at least twenty days prior thereto. The  
34 property shall be sold in the manner which will bring the  
35 highest and best price therefor. The commission may  
36 reject any or all bids received at the sale. The commis-  
37 sioner shall keep a record, open to public inspection, indi-  
38 cating the manner in which such real property, or any in-  
39 terest or right therein or structure thereon, was publicly  
40 advertised for sale, the highest bid received therefor and  
41 from whom, the person to whom sold, and payment re-  
42 ceived therefor. Such record shall be kept for a period  
43 of five years and may thereafter be destroyed.

44 The commission shall adopt and promulgate rules and  
45 regulations governing and controlling the making of any

46 leases or sales pursuant to the provisions of this section,  
47 which rules and regulations may provide for the giving  
48 of preferential treatment in making leases to the persons  
49 from whom the properties or rights or interests therein  
50 were acquired, or their heirs or assigns.

51 The commission may insert in any deed or conveyance,  
52 whether it involves an exchange, lease, or sale, such con-  
53 ditions as are in the public interest and have been ap-  
54 proved in advance by the governor.

55 All monies received from the exchange, sale, or lease  
56 of real property, or any right or interest therein, shall  
57 be paid into the state treasury and credited to the state  
58 road fund.

**Sec. 20. Relocation Assistance; Limits on Payments;**

2 **Rules and Regulations.**—The payment of relocation costs  
3 to persons dislocated by highway construction is hereby  
4 declared to be a cost of highway construction and may be  
5 paid from the state road fund, subject to the provisions  
6 of this section. The state road commissioner shall make  
7 the payments authorized by this section to reduce hard-  
8 ships to persons so dislocated. In addition, the commis-

9 sioner shall render advisory assistance to persons affected  
10 and shall call upon and coordinate the services of such  
11 other agencies of state and local government as may be  
12 capable of rendering such assistance to reduce hardships  
13 to persons affected and to reduce delays in highway con-  
14 struction. In rendering such advisory assistance, the com-  
15 missioner may accumulate and maintain lists of various  
16 kinds of properties available to which persons affected  
17 may be relocated, and acquire and file such other infor-  
18 mation and take such other action as may be necessary  
19 to render such advisory assistance.

20 Any individual, family, business concern (including the  
21 operation of a farm) or nonprofit organization to be dis-  
22 placed by a highway construction project shall be com-  
23 pensated consistent with the provisions and limitations of  
24 this section for reasonable and necessary costs to be in-  
25 curred in consequence of being so displaced. When a  
26 family is displaced, no additional payments shall be made  
27 to individuals who are members of such family; but, if two  
28 or more displaced families occupy the same dwelling or  
29 comprise a single household, each family within such

30 dwelling or household may receive relocation costs as pro-  
31 vided in this section. Payments under this section are  
32 subject to the following limitations and to any rules and  
33 regulations made by the commissioner as herein author-  
34 ized:

35 (1) Payments shall not exceed two hundred dollars in  
36 the case of a family or an individual, or three thousand  
37 dollars in the case of a business concern (including the  
38 operation of a farm) or nonprofit organization;

39 (2) In the case of a business concern (including the  
40 operation of a farm) and in the case of a nonprofit or-  
41 ganization, the allowable expense for transportation under  
42 this section shall not exceed the reasonable and necessary  
43 cost of moving fifty miles from the point from which such  
44 business or organization is being displaced and no expenses  
45 shall be allowed if a substantial portion of such business  
46 or organization is to be relocated outside the state.

47 The commissioner shall establish by rules and regula-  
48 tions a procedure for the payment of relocation costs with-  
49 in the limits of and consistent with the policies of this  
50 section. Such rules and regulations may authorize lump

51 sum payments to individuals or families, in lieu of their  
52 respective provable costs (not to exceed two hundred  
53 dollars in any case), based upon the size of the dwelling  
54 being vacated or the number of persons being affected  
55 or any other reasonable basis. The commissioner may  
56 authorize the obligation of or payment of relocation costs  
57 in advance of expenditure for relocation by any person,  
58 firm or organization eligible to receive such payment  
59 where such advance obligation or payment would speed  
60 the clearance of highway construction sites or reduce  
61 hardships.

### **Article 3. State Road Fund.**

**Section 4. Method of Disbursing Road Fund.**—The com-  
2 missioner shall certify monthly to the state auditor the  
3 amount due to each member of the commission, himself  
4 and each employee of the commission for services ren-  
5 dered as such members, commissioner and employees and  
6 the auditor shall issue his warrant therefor on the state  
7 treasurer, payable out of the state road fund appropriated  
8 for such purpose.

9 Any claim of a contractor or others, not otherwise pro-

10 vided for, for labor done or for materials, services or sup-  
11 plies furnished to the state road commission, pursuant to  
12 the provisions of any article of this chapter, shall be  
13 audited by the commissioner, and, if found correct, the  
14 commissioner shall issue the commission's requisition upon  
15 the auditor of the state therefor, showing the nature of  
16 such claim and whether it is for labor done or materials,  
17 services or supplies furnished for construction of state  
18 roads, or for other purposes, and the auditor shall issue  
19 his warrant upon the state treasurer therefor, and the  
20 treasurer shall pay the same to the person, firm or cor-  
21 poration entitled thereto, out of the funds in the treasury  
22 provided for that purpose.

**Sec. 4-a. Advancement of Compensation for Property**

2 **Immediately Needed.**—When the state road commissioner  
3 has commenced an action for condemnation of any real  
4 or personal property, or estate, right, or interest therein,  
5 and immediate entry upon, possession of, appropriation  
6 or use thereof, is deemed necessary by the commissioner,  
7 he may certify to the state auditor such facts, and issue  
8 the commission's requisition upon the auditor for ad-

9 vancement of the sum the commissioner estimates to be  
10 the fair value of the property, or estate, right, or interest  
11 therein, sought to be condemned, and the damages, if any,  
12 to the residue beyond the benefits, if any, to such residue,  
13 by reason of the taking. Upon receipt of such certificate  
14 and requisition, the auditor shall issue his warrant upon  
15 the state treasurer in favor of the clerk of the court where-  
16 in the action was commenced, for the sum requisitioned  
17 by the commission, to the use of the defendants in that  
18 action, and the treasurer shall pay the same to the clerk  
19 of that court out of the funds in the treasury provided for  
20 this purpose.

#### **Article 4. State Road System.**

##### **Section 9. Requiring Railways to Eliminate or Avoid**

2 **Railway-Highway Crossing at Grade.**—Whenever in his  
3 judgment it is necessary for the safety of the traveling  
4 public or to comply with the safety, design or construc-  
5 tion standards for a federal aid highway project, the state  
6 road commissioner may require any railroad company,  
7 owning, controlling or operating a railroad in this state,  
8 to eliminate railway-highway crossings at grade on exist-

9 ing highways and to avoid railway-highway crossings at  
10 grade on new highways, relocated highways and exten-  
11 sions of existing highways by separating the grades or by  
12 relocating an existing highway. The commissioner may  
13 determine the location, design and grade for any project  
14 or structure for the elimination or avoidance of railway-  
15 highway crossings at grade, and may determine whether a  
16 new, relocated or extended highway shall pass over or  
17 under the railroad right of way or tracks. The railroad  
18 company shall not be required to bear any part of the  
19 cost of construction or maintenance of such grade separa-  
20 tion, except where the separation structure eliminates an  
21 existing grade crossing.

**Sec. 10. Order Eliminating or Avoiding Railway-High-**  
2 **way Crossings at Grade; Amendment to Order.—(a)**  
3 Whenever, in the judgment of the state road commission-  
4 er, it is necessary for the safety of the traveling public,  
5 or to comply with the safety, design or construction  
6 standards for a federal aid highway project, that a rail-  
7 way-highway crossing at grade be eliminated on an exist-  
8 ing highway or avoided on a new highway, relocated

9 highway or extension of an existing highway by sepa-  
10 rating the grades or relocating an existing highway, the  
11 state road commissioner shall make an order to that effect  
12 and furnish a copy thereof by registered mail to the state  
13 auditor or attorney of record of the railroad affected by  
14 the order.

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

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

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

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

27 (B) The location, grade and width of the grade sepa-  
28 ration structure or crossing to be constructed and the  
29 angle at which the structure or crossing shall meet and

30 converge into the highway bed on either side of the rail-  
31 road tracks or right of way.

32 (c) Whenever a railroad company affected by the or-  
33 der specified in subsection (a) refuses to enter into a  
34 written agreement with the state road commissioner re-  
35 specting a federal-aid railway-highway project for elimi-  
36 nation or avoidance of railway-highway crossings at  
37 grade, the commissioner may amend the order made un-  
38 der subsection (a) to incorporate therein insofar as prac-  
39 ticable all the details required by the regulations, policies  
40 and procedures of the Bureau of Public Roads, United  
41 States Department of Commerce, to be included in writ-  
42 ten agreements between a railroad and a state respecting  
43 federal-aid railway-highway projects. The amended or-  
44 der shall be furnished by registered mail to the state  
45 auditor or attorney of record of the railroad affected  
46 thereby.

**Sec. 11. Protest Against Order; Hearing; Judicial Re-**  
2 **view.**—Any railroad company dissatisfied with the order  
3 of the state road commissioner directing the separation  
4 or elimination of grades at any point, may, within thirty

5 days after the receipt by the state auditor or attorney of  
6 record of such railroad company of a copy of the order  
7 directing the separation or elimination at such grades,  
8 file with the state road commissioner a protest giving the  
9 reasons of said railroad why such order should not be en-  
10 forced. On the filing of such protest, the state road com-  
11 missioner shall set down for hearing the matter in issue.  
12 On the hearing of the protest the state road commissioner  
13 shall hear all evidence which may be offered by any party  
14 upon the reasonableness of the separation or elimination  
15 of the grades, and if the commissioner, from the evidence,  
16 shall find that the construction of the work is necessary,  
17 he shall enter an order to that effect, and direct that the  
18 work shall be proceeded with in accordance with this  
19 article.

20 Any order entered by the state road commission pur-  
21 suant to the provisions of this section shall be subject to  
22 judicial review by the circuit court of the county in which  
23 the grades to be separated or eliminated are located, or  
24 the circuit court of Kanawha county, upon the filing in  
25 such court or with the judge thereof in vacation, of a pe-

26 tition for appeal by the party or parties aggrieved by  
27 such order, within thirty days from the date of the giving  
28 of written notice of such order by the state road commis-  
29 sioner to the party or parties to the hearing of the pro-  
30 test by certified or registered mail.

31 The party or parties making such appeal shall forth-  
32 with send a copy of such petition for appeal, by certified  
33 or registered mail, to the state road commissioner. Upon  
34 receipt of such copy of such petition for appeal the state  
35 road commissioner shall promptly certify and file in such  
36 court a complete transcript of the record upon which the  
37 order complained of was entered. The costs of such  
38 transcript shall be recovered by the party substantially  
39 prevailing on appeal.

40 The court sitting in lieu of the jury, or judge thereof in  
41 vacation, shall, after due notice, conduct a hearing on the  
42 issues presented by such appeal and shall permit argu-  
43 ment, oral or written or both, by the parties. The court  
44 shall permit such pleadings, in addition to the pleadings  
45 before the state road commissioner, as it deems to be re-  
46 quired. Evidence relating to the making of the order

47 complained of and relating to the questions raised by the  
48 allegations of the pleadings or other questions pertinent  
49 in the proceeding may be offered by the parties to the  
50 proceeding.

51 Upon such conditions as may be required and to the  
52 extent necessary to prevent irreparable injury, any cir-  
53 cuit court to which an appeal has been made as provided  
54 in this section, may, after due notice to and hearing of  
55 the parties to the appeal, issue all necessary and appropri-  
56 ate process to postpone the effective date of order of the  
57 state road commissioner complained of or to grant such  
58 other relief as may be appropriate pending final determi-  
59 nation.

60 A circuit court to which an appeal has been made as  
61 provided in this section, may affirm, annul or revise the  
62 order of the state road commissioner complained of, or it  
63 may remand the proceeding to the state road commis-  
64 sioner for such further action as it directs.

65 The decision of the circuit court on an appeal from the  
66 state road commissioner shall be final, subject only to re-  
67 view by the supreme court of appeals of West Virginia

68 upon a petition for certiorari filed in such court within  
69 sixty days from the entry of the order and decision of the  
70 circuit court upon such appeal from the state road com-  
71 missioner.

**Sec. 21. Form of Deeds and Contracts; Signing.**—Every  
2 deed and contract made by the state road commissioner  
3 shall be made in the name of the state road commission  
4 and shall be signed by the commissioner, and every con-  
5 tract shall also be signed by the contractor.

**Sec. 26. Designation of Streets or Bridges as Connecting**  
2 **Parts of State Road System; Bridges as Part of State Road**  
3 **System; Maintenance by State.**—The state road commis-  
4 sioner may, at any time, after due consultation with and  
5 notice to the governing body of the municipal corporation,  
6 locate and designate or relocate and redesignate, as a con-  
7 necting part of the state road system, any bridge or street  
8 within a municipal corporation. The commissioner may  
9 construct, reconstruct, improve and maintain the desig-  
10 nated or redesignated connecting part at the cost and  
11 expense of the state.

12 Any existing free bridge forming a connecting link

13 between two counties or two state routes is hereby  
14 adopted as part of the state road system and shall here-  
15 after be maintained by the state, and any existing free  
16 bridge forming a connecting link between this and another  
17 state is hereby adopted as part of such system, and shall,  
18 as to that part of the bridge within the boundary of this  
19 state, be maintained by the state.

**Sec. 29. Taking over Streets not to Affect Franchise.—**

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

**Sec. 30. Taking over Streets not to Affect Existing Con-**

2 **tracts.**—The taking over of any street as a connecting  
3 part of the state road system shall not affect any existing  
4 contract for construction, reconstruction or improvement.

**Sec. 31. Rules and Regulations of Commissioner to**

2 **Govern Streets Taken as Connecting Parts of the State**  
3 **Road System.**—The state road commissioner may, by  
4 reasonable rules and regulations, govern the widths and  
5 grades of streets designated as connecting parts of the  
6 state road system. He may regulate the opening of pave-

7 ment for the construction or repair of service lines or sub-  
8 structures, and may require adequate bond to secure the  
9 proper replacement of the pavement. He may also make  
10 other reasonable regulations concerning the construction  
11 and maintenance of the streets.

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

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

*C. Roy Parker*  
Chairman Senate Committee

*Ethel L. Randall*  
Chairman House Committee

Originated in the Senate.

Takes effect From passage.

*Howard Thayer*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Howard Carson*  
President of the Senate

*Julius W. Singleton*  
Speaker House of Delegates

The within approved this the 14<sup>th</sup>  
day of March, 1963.

*W. M. Baum*  
Governor