

1 **H. B. 3102**

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3 (By Delegate Martin (By Request))

4 [Introduced February 11, 2011; referred to the  
5 Committee on Roads and Transportation then the Judiciary.]

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10 A BILL to amend and reenact §17-4-47 of the Code of West Virginia,  
11 1931, as amended, relating to granting access to unused  
12 property of the Department of Highways to real property owners  
13 within a one mile radius of the land.

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

15 That §17-4-47 of the Code of West Virginia, 1931, as amended,  
16 be amended and reenacted to read as follows:

17 **ARTICLE 4. STATE ROAD SYSTEM.**

18 **§17-4-47. Access from commercial, etc., property and subdivisions**  
19 **to highways -- Purposes of regulation; right of**  
20 **access; provisions inapplicable to controlled-access**  
21 **facilities; removal of unauthorized access; bond for**  
22 **access.**

23 (a) Reciprocal access between state highways and real property  
24 used or to be used for commercial, industrial or mercantile  
25 purposes and reciprocal access between state highways and real  
26 property that is subdivided into lots is a matter of public concern

1 and shall be regulated by the Commissioner of Highways to achieve  
2 the following purposes:

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

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

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

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

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

17 (c) Except where the right of access has been limited by or  
18 pursuant to law, every owner or occupant of real property abutting  
19 upon or an owner of real property within a one mile radius of any  
20 existing unused state highway land may apply to the commissioner  
21 for the right to make a non-commercial and non-political use of the  
22 unused land. Appropriate use of the land may include, but is not  
23 limited to:

24 (1) Beatification of land by mowing and bailing of the hay,  
25 ditch or stream maintenance and litter removal;

26 (2) Residential gardening; and

1        (3) Other limited use of the property approved by the  
2 commissioner.

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

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

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

23        ~~(f)~~ (g) As a condition of granting access to a state highway,  
24 the commissioner may require the owners of real property developed  
25 or to be developed to provide a bond in an amount the commissioner  
26 determines necessary to compensate the division for improvements to

1 highway facilities required as a result of the development. This  
2 bond shall be held a maximum of ten years. ~~Provided, that~~ No bond  
3 shall be required for any residential development consisting of one  
4 hundred homes or less.

NOTE: The purpose of this bill is to grant access to unused property of the Department of Highways to real property owners within a one mile radius of the land for purposes of beautification and other limited uses approved by the commissioner.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.