

Senate Bill No. 655

(By Senator Beach)

[Introduced March 25, 2013; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §17-17B-1, §17-17B-2,
§17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7,
§17-17B-8 and §17-17B-9, all relating to DOT-Parkways
Authority Collection Enforcement; creating the Safe and
Efficient Parkways Act (SEPA); authorizing the electronic
enforcement of collection of tolls; establishing penalties for
nonpayment and damage to facilities; keeping certain
information collected confidential and not subject to the
Freedom of Information Act; allowing limited restricted and
confidential access to certain information pursuant to
subpoenas and court orders on a strictly confidential basis;
granting rule-making authority; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended
2 by adding thereto a new article, designated §17-17B-1, §17-17B-2,
3 §17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7, §17-17B-8
4 and §17-17B-9, all to read as follows:

5 **ARTICLE 17B. ELECTRONIC TOLL COLLECTION.**

6 **§17-17B-1. Legislative findings and purpose; Short title;**

7 **Definitions.**

8 (a) The Legislature finds and declares that the use of
9 electronic and video technology for Parkways projects will benefit
10 the citizens of the state by making Parkways projects in the state
11 safer and more efficient, by easing traffic congestion, by
12 improving traffic flow, by furthering economic development and by
13 promoting and enhancing more efficient commercial traffic and the
14 shipment of goods in the state. This article shall be known as and
15 may be cited as the "Safe and Efficient Parkways Act."

16 (b) The following words and phrases have the following
17 meanings when used in this article:

18 (1) "Authority" or "Parkways Authority" means the West
19 Virginia Parkways Authority established by article sixteen-a of
20 this chapter.

21 (2) "Division" means the Division of Highways, except where
22 another division is clearly identified.

23 (3) "Owner" means any person, corporation, firm, partnership,
24 agency, association, organization or lessor who:

1 (A) Is the beneficial or equitable owner of the vehicle;

2 (B) Holds title to the vehicle;

3 (C) Is the registrant or coregistrant of the vehicle
4 registered with the Division of Motor Vehicles or a comparable
5 agency of another jurisdiction or uses the vehicle in its vehicle
6 renting or leasing business; or

7 (D) Is a person entitled to the use and possession of a
8 vehicle subject to a security interest held by another person.

9 (4) "Electronic toll collection" means a system of collecting
10 tolls or charges that has or includes the capability of charging an
11 account holder, owner or operator of a vehicle for the prescribed
12 toll:

13 (A) By electronic transmission of information between a device
14 on a vehicle and a device located in a toll lane or otherwise used
15 at a toll collection facility; or

16 (B) By means of a video collection system.

17 (5) "Parkway project" has the meaning set forth in section
18 five, article sixteen-a, chapter seventeen of this code, and
19 specifically includes a highway project designated under sections
20 five-a and five-b of article seventeen-a, chapter seventeen of this
21 code.

22 (6) "Toll collection facility" means any facility, including
23 all related structures, equipment, systems and software, used in
24 connection with collecting or charging tolls for a parkway project,

1 regardless of whether the facility is located on, over or adjacent
2 to the highway included in the parkway project and regardless of
3 whether the facility has toll lanes with toll booths and toll
4 collection equipment that require passing vehicles to stop or slow
5 down in order to pay a toll or uses additional or different
6 methods, structures, technology and equipment in order to charge or
7 collect tolls from some vehicles passing under or by the facility
8 at highway speeds.

9 (7) "Video collection system" means a vehicle sensor, placed
10 in a location to work in conjunction with a toll collection
11 facility, that automatically produces a videotape or photograph,
12 microphotograph or other recorded image of the front or rear
13 portion, or both front and rear portion, of each vehicle at the
14 time the vehicle is used or operated on the toll facility in order
15 to charge or collect tolls or detect violations of this article.
16 This phrase includes, without limitation: (i) Any other technology
17 which identifies a vehicle by photographic, electronic or other
18 method; and (ii) all related toll invoices, billing notices and
19 other toll collection and violation enforcement efforts made using
20 any such technology and information.

21 **§17-17B-2. Electronic toll collection authorized.**

22 Notwithstanding the provisions of article sixteen-a and
23 section five-b, article seventeen-a of this chapter and section
24 seven-a, article six, chapter seventeen-c of this code to the

1 contrary, the collection of tolls and the enforcement of toll
2 violations may be enforced by electronic toll collection as
3 provided in this article and in rules promulgated by authority of
4 this article. In connection with any toll road in this state
5 authorized by section five-b, article seventeen-a of this chapter,
6 and in addition to any powers granted to the Commissioner of
7 Highways in this code, the commissioner, on behalf of the division,
8 may enter into cooperative agreements and arrangements with any
9 agency or other entity that handles or assists in the collection or
10 enforcement of tolls on the adjacent state's connecting toll
11 highway, whereby that agency or entity would assist the division in
12 the collection of tolls for the toll roads in this state or
13 enforcement of toll violations for the toll roads in this state or
14 both collection of tolls and enforcement of toll violations
15 utilizing electronic toll collection.

16 **§17-17B-3. Liability of owner.**

17 (a) All owners and operators of motor vehicles must pay the
18 posted toll when on any toll road, highway or bridge authorized by
19 article sixteen-a and section five-b, article seventeen-a of this
20 chapter, either by paying the toll at a toll collection facility on
21 the toll road, highway or bridge at the time of travel thereon or
22 by paying the toll within the time prescribed for toll payment in
23 a toll billing notice or invoice generated by an electronic toll
24 collection system. These tolls may be collected by electronic toll

1 collection. If an owner or operator of a vehicle fails to pay the
2 prescribed toll when due, the owner of the vehicle is in violation
3 of this article.

4 (b) If a violation occurs, the registration plate number of
5 the vehicle as recorded by a video collection system establishes an
6 inference for civil enforcement purposes that the owner of the
7 vehicle was operating the vehicle at that time. The inference may
8 be overcome if the owner:

9 (1) States that he or she was not operating the vehicle at the
10 time of the violation;

11 (2) Identifies who was operating the vehicle; and

12 (3) Supplies the name and address, if known, of the operator
13 of the vehicle.

14 (c) If an action or proceeding is commenced in a county other
15 than that of the residence of the owner, a sworn statement that
16 contains the information set forth in subsection (b) of this
17 section is sufficient to overcome the inference.

18 (d) If the inference is overcome, the identified operator of
19 the vehicle may be found to have violated this article.

20 (e) Nothing in this section prohibits: (i) A law-enforcement
21 officer from issuing a citation to a person in control of a vehicle
22 for a violation of this article or other provisions of law at the
23 time of the violation; or (ii) the division or the Parkways
24 Authority from issuing reminder notices or making other

1 communications directly or indirectly in connection with toll
2 collection efforts or efforts to enforce violations of this
3 article, and the division and authority are authorized to use
4 secondary sources of information and services including, but not
5 limited to, services such as the National Change of Address Service
6 or skip tracing services.

7 **§17-17B-4. Imposition of liability.**

8 If, as evidenced by a video collection system, a violation of
9 this article occurs, the following applies:

10 (1) The division or the Parkways Authority, as applicable,
11 will prepare and mail a notice of violation as follows:

12 (A) The notice of violation shall be sent by first class mail
13 to each person listed as owner;

14 (B) The notice shall be mailed to the address shown on the
15 vehicle registration or at the address of the operator, as
16 applicable.

17 (C) Notice shall be mailed no later than one hundred twenty
18 days after:

19 (i) The violation;

20 (ii) The date the inference is overcome by the owner pursuant
21 to subsection (b), section three of this article; or

22 (iii) The date that a lessor provides sufficient information
23 to identify who is the actual owner.

24 (D) Personal service is not required.

1 (E) The notice shall contain the following:

2 (i) Information advising the person of the violation, when and
3 where it occurred and that the violation may be contested.

4 (ii) A warning advising the person receiving the notice:

5 (I) That failure to contest in the manner and time provided is
6 an admission of liability;

7 (II) That a default judgment may be entered on the notice;

8 (III) That a violation of this article may subject the owner
9 or operator to civil penalties, administrative fees, administrative
10 hearing costs, and collection fees and costs as provided in this
11 article; and

12 (IV) That failure to pay civil penalties imposed pursuant to
13 this article shall result in denial of an application for a new or
14 renewal of vehicle registration in this state.

15 (F) A manual or automatic record of mailing prepared in the
16 ordinary course of business is prima facie evidence of the mailing
17 of notice.

18 (2) If an owner of a vehicle receives a notice of violation of
19 this article for any time period during which the vehicle was
20 reported to a police department as having been stolen, that owner
21 may not be liable if he or she provides a certified copy of the
22 police report on the stolen vehicle to the division or the Parkways
23 Authority within thirty days after receiving the notice of
24 violation.

1 (3) If an owner of a vehicle receives a notice of violation of
2 this article for any time period during which the vehicle was being
3 leased or rented, that owner may not be liable if he or she
4 provides a copy of the rental, lease or other contract document
5 that contains the name and address of the lessee to the division or
6 the Parkways Authority within thirty days after receiving the
7 notice of violation.

8 (4) A certified report or a facsimile report of an authorized
9 agent or employee of the division or the Parkways Authority
10 reporting a violation of section three of this article based upon
11 the recorded information obtained from a video collection system is
12 prima facie evidence of the facts contained in the report and is
13 admissible as an official record kept in the ordinary course of
14 business.

15 (5) Notwithstanding any provision in the code to the contrary,
16 videotapes, photographs, microphotographs or other recorded images,
17 written records, reports or facsimiles prepared pursuant to this
18 article are allowed and are for the exclusive use of the division
19 or the Parkways Authority, as applicable, its authorized agents,
20 its employees and law-enforcement officials for the purpose of
21 discharging duties under this article. Except as may be necessary
22 to enforce collection of tolls, civil penalties administrative
23 fees, administrative hearing costs and collection fees and costs
24 from persons to whom a notice of violation is sent as provided in

1 this section, or to whom any billing invoice, reminder letter or
2 other toll collection or violation enforcement communication is
3 sent using electronic toll collections, all images and records
4 created or retained as provided herein that identify individual
5 vehicles or vehicle registration plates, must be destroyed within
6 sixty days after payment in full of the applicable toll. The images
7 and records must be destroyed within sixty days after any toll
8 collection or enforcement action under this article involving the
9 images or records has been resolved. This information may not be
10 considered a public record under chapter twenty-nine-b of this
11 code. The information is not discoverable by court order and it
12 may not be offered in evidence in any action or proceeding that is
13 not directly related to a violation of this article or
14 indemnification permitted by this article. However, these
15 restrictions:

16 (A) Do not preclude a court of competent jurisdiction from
17 issuing an order directing that the information be provided to law-
18 enforcement officials if the information is reasonably described
19 and is requested in connection with a criminal law-enforcement
20 action;

21 (B) Do not preclude the exchange of the information between
22 any entities with jurisdiction over or that operate an electronic
23 toll collection system in this state or any other jurisdiction
24 within or outside of the United States; and

1 (C) Do not prohibit the use of information exclusively for the
2 purpose of billing electronic toll collection account holders,
3 deducting toll charges from the account of an account holder,
4 enforcing toll collection provisions of this code or enforcing the
5 provisions of an account holder agreement.

6 (6) Civil liability under this article is to be based upon a
7 preponderance of evidence. Persons receiving a notice of violation
8 as provided in this section must respond within thirty days of the
9 date the notice was mailed by:

10 (A) Remitting the amount of the unpaid toll and any
11 administrative fee assessed; or

12 (B) Requesting an administrative hearing in accordance with
13 rules promulgated by authority of this article. In addition to any
14 unpaid tolls and an administrative fee not to exceed \$35 per
15 notification for each separate violation, persons who are found to
16 be liable in an administrative hearing are liable for the costs of
17 the hearing, except where the judgment of the hearing examiner is
18 reversed or set aside by a court of competent jurisdiction.

19 Failure to remit the unpaid toll, assessed administrative fees
20 and assessed hearing costs or to request a hearing will result in
21 entry of an administrative default judgment. The division or the
22 authority, as may be the case, may cause notice of the default
23 judgment to be served on the person to whom the notice of violation
24 was sent by certified mail, return receipt requested, advising the

1 person that failure to pay the unpaid tolls, assessed
2 administrative fees and assessed hearing costs within thirty days
3 of receipt of the notice of default judgment will result in denial
4 of an application for a new vehicle registration in this state. If
5 the unpaid tolls, assessed administrative fees, and assessed
6 administrative hearing costs are not paid as provided in the notice
7 of default judgment, or if the judgment is not set aside by a court
8 of competent jurisdiction, the division or the authority may take
9 all lawful actions to collect on the judgment and may notify the
10 Commissioner of the Division of Motor Vehicles, who shall refuse
11 the registration or renewal of registration of the vehicle in this
12 state as provided in section eight of this article.

13 (7) Civil liability under this article is not a conviction and
14 may not be made part of the owner's motor vehicle operating record.
15 It may not be considered in the provision of motor vehicle
16 insurance coverage.

17 (8) A person found to have violated this article is liable
18 for:

19 (A) The amount of the toll evaded or attempted to be evaded;
20 if the amount can be determined, or if it cannot be determined, the
21 minimum toll from the nearest point of entry on the toll facility
22 to the actual point of exit;

23 (B) An administrative fee not to exceed \$35 per notification
24 for each separate violation;

1 (C) Administrative hearing costs assessed under this article;
2 and

3 (D) Reasonable fees and costs of attempting to collect on a
4 judgment under subsection (6) of section four of this article.

5 **§17-17B-5. Placement of electronic toll collection device.**

6 An electronic toll collection device that is properly affixed
7 to the front windshield of a vehicle in accordance with the
8 division or authority rules or is mounted elsewhere on a vehicle in
9 accordance with mounting instructions included with the device, or
10 is otherwise used in a manner that makes it operate as intended, is
11 not a violation of section thirty-six, article fifteen, chapter
12 seventeen-c of this code.

13 **§17-17B-6. Privacy of electronic toll collection account holder**
14 **information; subpoenas and court orders and related**
15 **confidentiality protections.**

16 (a) Except as provided in subsection (b) of this section, and
17 notwithstanding any provision in the code to the contrary,
18 videotapes, photographs, microphotographs, other recorded images,
19 written records, reports or facsimiles prepared pursuant to this
20 article are for the exclusive use of the division or the Parkways
21 Authority, as applicable, its authorized agents, its employees and
22 law-enforcement officials for the purpose of discharging duties
23 under this article. This information includes names, addresses,

1 account numbers, account balances, personal financial information,
2 vehicle movement records and other information compiled from
3 transactions with the account holders. The information may not be
4 considered a public record under chapter twenty-nine-b of this
5 code.

6 (b) Notwithstanding subsection (a) of this section,
7 videotapes, photographs, microphotographs, other recorded images,
8 written records, reports or facsimiles prepared and retained
9 pursuant to this article may be discoverable pursuant to a properly
10 issued subpoena or by an order of a court of competent jurisdiction
11 directing that the information be produced in a civil or criminal
12 action or proceeding: *Provided*, That any such information required
13 to be produced in response to a properly issued subpoena or court
14 order shall at all times be confidential and may not be disclosed
15 by the division or the Parkways Authority other than in connection
16 with, and only for the purposes of, the underlying action and
17 subject to compliance with the provisions of subsections (c), (d)
18 and (e) of this section.

19 (c) All information disclosed or produced by subsection (b) of
20 this section shall be clearly marked "CONFIDENTIAL." Any document
21 or other material which is marked "CONFIDENTIAL" or the contents
22 thereof, may only be used by a party to the underlying action or
23 proceeding or a party's attorney, expert witness, consultant or
24 other person who is actively engaged in working on the action, and

1 only for the purpose of the underlying action or proceeding and not
2 for any other purpose. Prior to a party disclosing any document or
3 other material marked as "CONFIDENTIAL," or the contents thereof,
4 to an attorney, expert witness, consultant or other person actively
5 engaged in working on such action or proceeding, the party making
6 disclosure must first inform the person that he or she is bound by
7 the duty of confidentiality established under this section and the
8 person to whom disclosure is to be made shall sign an
9 acknowledgment that the information is and shall remain at all
10 times confidential and that the person agrees to abide by the duty
11 of confidentiality established under this section.

12 (d) Prior to the production of any information under this
13 section with any court of competent jurisdiction, the division or
14 the Parkways Authority shall file a motion with the court seeking
15 to have the documents sealed and withheld from the public record
16 throughout the action or proceeding.

17 (e) At the conclusion of the action or proceeding, all
18 documents and other material marked as "CONFIDENTIAL" and any
19 copies thereof, and all related notes and memoranda, shall promptly
20 be returned to the division or the Parkways Authority, as
21 applicable, and in any event, within thirty days following the
22 conclusion of the action or proceeding.

23 **§17-17B-7. Evading tolls; damaging, interfering with or**
24 **obstructing video toll collection or**

1 **infrastructure; violations and penalties.**

2 (a) Any person who knowingly or intentionally evades or seeks
3 to evade the payment of tolls, rents, fees or charges established
4 by the division or the Parkways Authority for the use of any toll
5 facility under the jurisdiction of those agencies is guilty of a
6 misdemeanor and, upon conviction, shall be fined not more than \$50.

7 (b) Any person who deliberately damages, defaces or obstructs
8 a video collection system infrastructure or power supply with the
9 intent to interfere with or alter or prevent the functioning of the
10 system or electronic toll collection, or who obstructs a license
11 plate or causes it to be unreadable by the video collection system,
12 or who causes a transponder or other device used in an electronic
13 toll system to be inoperable or unreadable thereby causing no toll
14 to be charged, is guilty of a misdemeanor and, in addition to any
15 other penalties provided by the code, and upon conviction, shall be
16 fined not more than \$500 and, if applicable, is additionally liable
17 to the division or the Parkways Authority for all costs to repair
18 the damaged, defaced or obstructed property.

19 **§17-17B-8. Nonrenewal of vehicle registration; effect of civil or**
20 **criminal violation.**

21 Upon receipt of a notice from the division or the authority
22 that a vehicle owner or operator failed to pay tolls and costs in
23 accordance with a notice of default judgment, the Commissioner of
24 the Division of Motor Vehicles shall refuse to register, or renew

1 the registration of any vehicle of which the person committing the
2 violation is a registered owner or coowner until such time as the
3 Commissioner of the Division of Motor Vehicles receives notice from
4 the division or authority that all fees, penalties and costs
5 imposed on that person pursuant to this article have been paid or
6 satisfied.

7 **§17-17B-9. Rule-making authority.**

8 The Commissioner of the Division of Motor Vehicles, the
9 Commissioner of Highways on behalf of the division and the Parkways
10 Authority shall propose rules for legislative approval in
11 accordance with the provisions of article three, chapter
12 twenty-nine-a of the code to implement this article.

NOTE: The purpose of this bill is to authorize electronic collection and enforcement of tolls. It establishes penalties for nonpayment and damage to facilities. It keeps certain information collected confidential and not subject to the Freedom of Information Act. The bill allows certain limited restricted and confidential access to certain information pursuant to subpoenas and court orders on a strictly confidential basis. The bill also grants rule-making authority and defines terms.

This article is new; therefore, strike-throughs and underscoring have been omitted.