

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Originating

Senate Bill 689

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[Originating in the Committee on the Judiciary;

Reported on March 25, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §17-2A-8d, relating to payment of small claims by the Division of Highways;
3 setting forth findings and a declaration of public purpose; recognizing the need for an
4 efficient process to pay certain claims against the Division of Highways; retaining the
5 state's sovereign immunity; requiring the division to develop a system to investigate and
6 pay certain small claims; establishing minimum requirements for the system to evaluate
7 and pay the claims; specifying information to be submitted by a claimant; limiting types of
8 claims and amount of claims authorized under the system; requiring Division of Highways
9 review each claim and return incomplete claims for correction; allowing claimant thirty
10 calendar days to make corrections and return claim to division; requiring division to submit
11 a report of all claims to the Legislative Auditor for approval; providing Legislative Auditor
12 fifteen calendar days to approve or disapprove claim; authorizing Legislative Auditor to
13 request additional information on a claim; providing Legislative Auditor ten calendar days
14 to act on claim after receiving requested information; providing that a claimant whose claim
15 has not been approved is not barred from filing a claim with the West Virginia Claims
16 Commission; authorizing the promulgation of rules; requiring division process claims upon
17 receipt of Legislative Auditor's approval; and requiring State Auditor issue warrant for
18 payment.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a
2 new section, designated §17-2A-8d, to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8d. Findings and declaration of public purpose; small claims payment.

1 (a) The Legislature finds and declares:

2 (1) That the citizens of this state have been and continue to be served by a system of
3 state roads that are essential for economic growth, connecting people, services and markets,
4 including showcasing our state and promoting tourism;

5 (2) That the Division of Highways owns and maintains ninety percent of the state's roads,
6 with the remaining ten percent owned by either a municipality, federal agency or the West Virginia
7 Parkways Authority;

8 (3) That according to recent studies, our state highways and bridges are in poor condition
9 and our naturally occurring weather conditions and shrinking road funds exacerbate the problems
10 with our highway system;

11 (4) That the state has an interest in providing a system that makes fair compensation
12 available to those individuals whose vehicles have been damaged due to disrepair of our roads
13 and bridges;

14 (5) That it is the duty and responsibility of the Legislature to balance the desire to treat our
15 citizens and the traveling public fairly and ensuring adequate funding to maintain adequate and
16 safe roads and bridges;

17 (6) That in balancing these compelling state interests, the Legislature acknowledges the
18 sovereign immunity set forth in the West Virginia Constitution under Section 35, Article VI, to
19 prevent the diversion of state moneys from legislatively appropriated purposes;

20 (7) That the Legislature has previously established a system to review claims and make
21 recommendations to the Legislature as to the moral obligation of the state to pay certain claims
22 against the state;

23 (8) That this system is unwieldly and time consuming, taking a year or more to process
24 claims, some of which are small and are readily admitted by the Division of Highways;

25 (9) That in the interest of processing those small claims alleging that damage to a vehicle
26 was caused by a condition on a state road or bridge, the Division of Highways should be
27 authorized to pay the claims from funds appropriated by the Legislature for that purpose;

28 (10) That small claims for damage to vehicles due to poor road conditions have historically
29 taken up to eighteen months to be authorized for payment by the Legislature; and

30 (11) That nothing contained in this section, nor payment of any claim by the Division of
31 Highways, waives or abrogates in any way the sovereign immunity of the state or deprives the
32 Division of Highways, its officers or employees of the protections of sovereign immunity.

33 (b) Notwithstanding any provision of this code to the contrary, the Division of Highways
34 shall develop a system to promptly evaluate and pay small claims where the damage occurred
35 on or after July 1, 2017, for vehicles damaged due to specific road conditions. The Division of
36 Highways shall:

37 (1) Develop a claims form which shall be available on the Department of Transportation,
38 Division of Highways and West Virginia Legislature websites and paper claim forms shall be made
39 available at all Division of Highways offices and other locations. A claimant may complete and
40 submit the claims form electronically or by United States mail;

41 (2) Require a claimant to fully complete the claims form and provide the declaration page
42 from his or her insurance policy in effect at the time of the accident, photographic evidence of the
43 claimed damage and photographic evidence of the road hazard or condition which is alleged to
44 have caused the damage; and

45 (3) Require the claimant to provide a receipt, invoice or estimate to repair the damage and
46 a signed, notarized release form along with the completed claim form. The Division of Highways
47 shall provide a release form to the claimant upon approval of the claim.

48 (c) The claim procedure authorized by subsection (a) of this section applies to any claim:

49 (1) That does not arise under an appropriation for the current fiscal year;

50 (2) That alleges that a condition on the state's highways or roads caused property damage
51 to a vehicle;

52 (3) With which the Division of Highways agrees; and

53 (4) The amount the amount of which does not exceed \$3,000.

54 (d) The Division of Highways shall review each claim submitted and return any claim that
55 does not contain all of the required information to the claimant with a written explanation of the
56 deficiencies. The claimant has thirty calendar days from the date the division returns the claim to
57 correct the deficiencies and return the completed claim form and documentation to the division.

58 (e) The Division of Highways shall submit to the Legislative Auditor a monthly report setting
59 forth each request for payment of a claim and whether the division approved or disapproved a
60 request for payment. Within fifteen calendar days of receipt of the report, the Legislative Auditor
61 shall notify the division of the approval or disapproval of each claim. If the Legislative Auditor
62 needs additional information, prior to making a decision on a claim, he or she shall request the
63 information from the division or the claimant. The Legislative Auditor has ten calendar days from
64 the date of the receipt of the requested information to approve or disapprove the claim.

65 (f) After receiving approval from the Legislative Auditor, the Division of Highways shall
66 process a claim for payment. Payment of claims authorized by this section shall be from funds
67 appropriated by the Legislature for that purpose.

68 (g) If a claim is disapproved by the division or the Legislative Auditor, the claimant is not
69 barred from filing a claim with the West Virginia Claims Commission under article two, chapter
70 four of this code.

71 (h) The division shall use public outreach, notification, education and awareness methods
72 to publicize the new system for submitting small claims directly to the division.

73 (i) The Division of Highways shall forward any claim that does not meet the requirements
74 for processing as a small claim authorized by this section to the West Virginia Claims Commission.

75 (j) The West Virginia Claims Commission shall forward any claim that meets the
76 requirements for processing as a small claim authorized by this section to the Division of
77 Highways.

78 (k) The Division of Highways shall promulgate rules in accordance with article three,
79 chapter twenty-nine-a of this code to implement the provisions of this section.

NOTE: The purpose of this bill is to create a small claim payment system within the Division of Highways to investigate and pay limited types of claims for damage to vehicles caused by road conditions.

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