

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 445**

BY SENATORS BOSO, SWOPE, GAUNCH, JEFFRIES,  
RUCKER, MARONEY, PLYMALE, MAYNARD, AND BEACH

[Originating in the Committee on Government  
Organization; Reported on February 23, 2018]



1 A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §17-2A-17a; to amend said code by adding thereto a new article, designated  
3 §17-2E-1, §17-2E-2, §17-2E-3, §17-2E-4, §17-2E-5, §17-2E-6, §17-2E-7, and §17-2E-8;  
4 to amend said code by adding thereto two new sections, designated §17-4-17b and §17-  
5 4-17e; and to amend said code by adding thereto a new section, designated §24-2-20, all  
6 relating to public utilities; creating new legislative findings; defining terms; providing for  
7 longitudinal access on Division of Highways rights-of-way; setting forth terms for certain  
8 agreements including how they must relate to other telecommunications carriers; requiring  
9 the Division of Highways comply with certain federal requirements as to fair market value  
10 and obtaining certain Federal Highway Administration approvals; setting forth  
11 requirements for fair and reasonable compensation for access to the right-of-way;  
12 authorizing compensation to be monetary, in-kind, or a combination of both; providing for  
13 reevaluation of the compensation every five years; providing that the Division of Highways  
14 has sole discretion to deny access if the safe, efficient, and convenient use of highway,  
15 road, or interstate would be compromised; providing that the access granted herein does  
16 not affect previous access granted by the division; promoting joint use and proportionate  
17 cost sharing; requiring a carrier seeking a permit to notify the Broadband Enhancement  
18 Council and other carriers of record of the permit application; setting forth notice  
19 requirements; providing that a carrier seeking the permit must resolve any disputes among  
20 other carriers seeking access; providing that the Public Service Commission will resolve  
21 disputes the carriers are not able to resolve; requiring all carriers sharing a trench to share  
22 the cost and benefits; requiring the division deposit any compensation collected for access  
23 to its right-of-way be deposited in the State Road Fund; authorizing in-kind compensation  
24 and listing allowable telecommunications facilities for in-kind payment; requiring the  
25 division to value in-kind compensation at fair market value; providing that in-kind  
26 compensation may be disposed of after 10 years if it is not being used; giving the carrier

27 providing the in-kind compensation right of first refusal; providing for public auction in  
28 certain circumstances; providing that multiple carriers in the same trench have obligation  
29 to compensate the division; allowing the division to hold each carrier jointly and severally  
30 liable for obligations owed to the division; requiring carriers allow the division to audit  
31 records and contracts to ensure compliance; providing that existing policies, rules and  
32 procedures relating to other utilities within the right-of-way are not altered by this act;  
33 allowing the division to consider the financial and technical qualifications of a carrier when  
34 setting insurance requirements; allowing the division to require carriers to install  
35 telecommunications in the same general location, coordinate planning and work with other  
36 contractors in the same area; requiring placement, installation, maintenance, repair, use,  
37 operation and related activities on the right-of-way be in compliance with the division's  
38 rules, policies and guidelines; and requiring that access to a right-of-way be administered  
39 in compliance with the Telecommunications Act of 1996, 47 U.S.C. §151, *et seq.*;  
40 establishing a method by which the Commissioner of the Division of Highways may  
41 acquire certain rights-of-way and easements for the purpose of increasing public access  
42 to utilities; establishing a procedure for the Division of Highways to lease acquisitions to  
43 utilities for fair market value; and establishing a cost-sharing procedure for determining  
44 how relocation costs are to be paid by the utility.

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

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

#### **§17-2A-17a. Acquisition of property for utility accommodation purposes; utility defined.**

45 (a) The Legislature finds that it is in the public interest for utility facilities to be  
46 accommodated on the right-of-way of state highways when such use and occupancy of the  
47 highway right-of-way do not adversely affect highway or traffic safety or otherwise impair the

48 highway or its aesthetic quality, and do not conflict with the provisions of federal, state, or local  
49 laws, legislative rules, or agency policies. Utilities provide an essential service to the general  
50 public and, as a matter of sound economic public policy and law, utilities have used state road  
51 rights-of-way for transmitting and distributing their services. Such accommodation of utility  
52 facilities on the right-of-way of state highways serves an important public purpose by increasing  
53 public access to utility services.

54 (b) "Utility" means, for purposes of this chapter, privately, publicly, or cooperatively owned  
55 line, facility, or system for producing, transmitting, or distributing communications, data,  
56 information, video services, power, electricity, light, heat, gas, oil, crude products, water, steam,  
57 waste, stormwater not connected with highway drainage, or any other similar commodity,  
58 including any fire or police signal system or street lighting system, which directly or indirectly  
59 serves the public. The term "utility" also includes those similar facilities which are owned or leased  
60 by a government agency for its own use, or otherwise dedicated solely to governmental use.

61 (c) In addition to all other powers given and assigned to the commissioner in this chapter,  
62 the commissioner may acquire, either temporarily or permanently, in the name of the Division of  
63 Highways, all real or personal property, public or private, or any interests or rights therein,  
64 including any easement, riparian right, or right of access, determined by the commissioner to be  
65 necessary for present or presently foreseeable future utility accommodation purposes.

66 (d) Notwithstanding any provision of this article, the commissioner may lease real property  
67 held by the Division of Highways or any interest or right in the property, including airspace rights,  
68 if any, for the purpose of accommodating any utility that has requested a lease if the commissioner  
69 finds, in his or her sole discretion, that entering into the lease agreement with the utility is in the  
70 public interest. The term of any accommodation lease authorized by this section shall not exceed  
71 30 years. Neither competitive bids nor public solicitations are required prior to entering into a  
72 utility accommodation lease. Any utility accommodation lease shall require the utility to pay fair  
73 market value for the real property interest as determined by the commissioner using common

74 valuation methods, which shall include consideration of the use of the property for utility  
75 accommodation purposes: *Provided*, That amounts paid for property damage by the division in a  
76 condemnation case shall not be considered in the commissioner's determination of fair market  
77 value. The commissioner shall have the option to charge and collect a one-time lease payment  
78 or fixed installment lease payments from a utility in connection with an accommodation lease. All  
79 moneys received from utility accommodation leases shall be paid into the state Treasury and  
80 credited to the State Road Fund. The provisions of this subsection are completely voluntary and  
81 shall not be interpreted to require any utility to lease any real property, or any interest or right in  
82 the property, from the commissioner.

**ARTICLE 2E. DIG ONCE POLICY.**

**§17-2E-1. Legislative findings.**

1 (a) The Legislature finds that it is in the public interest to accommodate  
2 telecommunications facilities on Division of Highways' right-of-way when the use of the right-of-  
3 way does not adversely affect the safety of the traveling public or impair the highway or its  
4 aesthetic quality or conflict with any federal, state, or local laws, rules, regulations, or policies.

5 (b) The Legislature further finds that a broadband connection is an essential part of  
6 developing the state and local economies, enhancing the transportation system and creating a  
7 safer and more secure environment for our citizens.

8 (c) The Legislature further finds that expanding telecommunication facilities will allow the  
9 state to participate in the E-Rate Program of funding for digital education in America to provide  
10 reliable services opportunities for education and training.

11 (d) The Legislature further finds that fast, reliable broadband connections enhance  
12 telemedical opportunities for our rural doctors and hospitals, linking them to our major medical  
13 centers. Thereby overcoming distance barriers, and improving access to medical services that  
14 often are not consistently available in rural communities.

15           (e) The Legislature further finds that instituting a dig once policy encourages  
16 telecommunications carriers to coordinate installation of broadband conduit to minimize costs to  
17 the carriers and minimize disruption and inconvenience to the traveling public.

**§17-2E-2. Definitions.**

1           For the purposes of this article:

2           “Broadband conduit” or “conduit” means a conduit, innerduct, or microduct for fiber optic  
3 cables that support facilities for broadband service.

4           “Longitudinal access” means access to or the use of any part of a right-of-way that extends  
5 generally parallel to the traveled way.

6           “Permit” means an encroachment permit issued by the West Virginia Division of Highways  
7 that specifies the requirements and conditions for performing work in a right-of-way.

8           “Right-of-way” means land, property, or any interest therein acquired or controlled by the  
9 West Virginia Division of Highways for transportation facilities or other transportation purposes or  
10 specifically acquired for utility accommodation.

11           “Telecommunications facility” means any cable, line, fiber, wire, conduit, innerduct, access  
12 manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment,  
13 power equipment, or other equipment, system, or device that is used to transmit, receive,  
14 produce, or distribute a signal for telecommunications purposes via wireless, wireline, electronic,  
15 or optical means.

16           “Telecommunications carrier” means a telecommunications provider as determined by the  
17 Public Service Commission of West Virginia or that meets the definition of telecommunications  
18 carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153

19           “Utility facility” has the meaning ascribed to it in §17-2A-17a of this code.

20           “Wireless access” means access to and use of a right-of-way for the purpose of  
21 constructing, installing, maintaining, using, or operating telecommunications facilities for wireless  
22 telecommunications.

**§17-2E-3. Use of rights-of-way.**

1           (a) Before granting longitudinal access or wireless access to a right-of-way, the Division  
2 of Highways shall first enter into an agreement with a telecommunications carrier that is  
3 competitively neutral and nondiscriminatory as to other telecommunications carriers. Upon receipt  
4 of any required approval or concurrence by the Federal Highway Administration the division may  
5 issue a permit granting access under this section: *Provided*, That the Division of Highways shall  
6 comply with all applicable federal regulations with respect to approval of an agreement, including  
7 but not limited to 23 C.F.R. § 710.403 and 23 C.F.R. §710.405. The agreement shall be approved  
8 by the Commissioner of Highways in order to be effective and, without limitation:

- 9           (1) Specify the terms and conditions for renegotiation of the agreement;
- 10           (2) Set forth the maintenance requirements for each telecommunications facility;
- 11           (3) Be nonexclusive; and
- 12           (4) Be for a term of not more than 30 years.

13           (b) Unless specifically provided for in an agreement entered into pursuant to §17-2E-3(a)  
14 of this code, the Division of Highways may not grant a property interest in a right-of-way pursuant  
15 to this article.

16           (c) A telecommunications carrier shall compensate the Division of Highways for access to  
17 a right-of-way for the construction, installation, and maintenance of telecommunication facilities,  
18 the use of spare conduit or related facilities of the Division of Highways as part of any longitudinal  
19 access or wireless access granted to a right-of-way pursuant to this section. The compensation  
20 must be, without limitation:

- 21           (1) At fair market value;
- 22           (2) Competitively neutral;
- 23           (3) Nondiscriminatory;
- 24           (4) Open to public inspection;



25 (5) Calculated based on the geographic region of this state, taking into account the  
26 population and the impact on private right-of-way users in the region;

27 (6) Paid in cash or with in-kind compensation, or a combination of cash and in-kind  
28 compensation; and

29 (7) Paid in a lump-sum payment or in annual installments, as agreed to by the  
30 telecommunications carrier and the Division of Highways.

31 (d) The division may consider adjustments for areas the division determines, in  
32 conjunction with the Broadband Enhancement Council, are unserved or underserved areas.

33 (e) For the purpose of determining the amount of compensation a telecommunications  
34 carrier must pay the Division of Highways for the use of spare conduit or excess conduit or related  
35 facilities of the Division of Highways as part of any longitudinal access or wireless access granted  
36 to a right-of-way pursuant to this section, the division shall:

37 (1) Conduct an analysis once every five years, in accordance with the rules, policies, or  
38 guidelines of the Division of Highways, to determine the fair market value of a right-of-way to  
39 which access has been granted pursuant to this section; and

40 (2) If compensation is paid in-kind, determine the fair market value of the in-kind  
41 compensation based on the incremental costs for the installation of conduit and related facilities.

42 (e) The value of in-kind compensation, or a combination of money and in-kind  
43 compensation, must be equal to or greater than the amount of monetary compensation that the  
44 Division of Highways would charge if the compensation were paid solely with money.

**§17-2E-4. Highway safety.**

1 (a) The Division of Highways, in its sole discretion, may deny any longitudinal access or  
2 wireless access if such access would compromise the safe, efficient, and convenient use of any  
3 road, route, highway, or interstate in this state for the traveling public.

4 (b) Any longitudinal access or wireless access to a right-of-way granted by the Division of  
5 Highways pursuant to this article does not abrogate, limit, supersede, or otherwise affect access

6 granted or authorized pursuant to the division's rules, policies, and guidelines related to  
7 accommodation of utilities on highways' rights-of-way and adjustment and relocation of utility  
8 facilities on highway projects.

**§17-2E-5. Joint use.**

1 (a) The Division of Highways shall provide for the proportionate sharing of costs between  
2 telecommunications carriers for joint trenching or trench sharing based on the amount of conduit  
3 innerduct space or excess conduit that is authorized in the agreements entered into pursuant to  
4 this article. If the division plans to use the trench it shall pay its proportional share unless it is  
5 utilizing the trench as in-kind payment for use of the right-of-way.

6 (b) Upon application for a permit, the carrier will notify, by email, the West Virginia  
7 Broadband Enhancement Council and all other carriers on record with the West Virginia  
8 Broadband Enhancement Council of the application. Other carriers have 30 calendar days to  
9 notify the applicant if they wish to share the applicant's trench. This requirement extends to all  
10 underground construction technologies.

11 (c) The carrier shall also meet the following conditions for a permit:

12 (1) The telecommunications carrier will be required to place, at its sole expense, a Class  
13 II legal advertisement, in accordance with §59-3-2(a) of this code, and of a form and content  
14 approved by the Division of Highways, in the local project area newspaper, in the Charleston  
15 newspaper, on industry and the Division of Highways' websites, and within other pertinent media,  
16 announcing the general scope of the proposed installation within the right-of-way and providing  
17 competing telecommunications carriers the opportunity to timely express an interest in installing  
18 additional telecommunication facilities during the initial installation. The legal advertisement is to  
19 run at least two consecutive weeks, and the telecommunications carrier is to notify the division of  
20 any interest of other parties received.

21 (2) If a competing telecommunications carrier expresses interest in participating in the  
22 project, an agreement between the two (or more) telecommunications carriers will be executed

23 by those entities, outlining the responsibilities and financial obligations of each, with respect to  
24 the installation within the right-of-way. A copy of the executed agreement shall be provided to the  
25 Division of Highways.

26 (3) The telecommunications carrier that placed the legal advertisement is responsible for  
27 resolving in good faith all disputes between any competing telecommunications carriers that  
28 timely responded to the advertisement and that wishes to install facilities within the same portion  
29 of the rights-of-way to be occupied. Should a dispute arise between the initial telecommunications  
30 carrier and a competing telecommunications carrier, the initial telecommunications carrier will  
31 attempt to mediate the dispute. Any dispute that is not resolved by the telecommunications  
32 carriers shall be adjudicated by the Public Service Commission.

33 (d) If two or more telecommunications carriers are required or authorized to share a single  
34 trench, each carrier in the trench must share the cost and benefits of the trench in a fair,  
35 reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all  
36 underground construction technologies.

**§17-2E-6. Monetary and in-kind compensation.**

1 (a) All monetary compensation collected by the Division of Highways pursuant to this  
2 article shall be deposited in the State Road Fund.

3 (b) In-kind compensation paid to the Division of Highways under an agreement entered  
4 into pursuant to this article may include, without limitation:

5 (1) Conduit or excess conduit;

6 (2) Innerduct;

7 (3) Dark fiber;

8 (4) Access points;

9 (5) Telecommunications equipment or services;

10 (6) Bandwidth; and

11 (7) Other telecommunications facilities as a component of the present value of the  
12 trenching.

13 (c) The Division of Highways shall value any in-kind compensation based on fair market  
14 value at the time of installation or review.

15 (d) In-kind compensation paid to the Division of Highways may be disposed of if both of  
16 the following conditions are met:

17 (1) The telecommunications facility received as in-kind payment has not been used within  
18 10 years of its installation; and

19 (2) The Commissioner of the Division of Highways determines that the division does not  
20 have an immediately foreseeable need for the telecommunications facility.

21 (e) Upon determining that it is appropriate to dispose of the telecommunications facility,  
22 the division shall determine its current fair market value. The division shall offer the provider or  
23 providers who made the in-kind payment the option to purchase any telecommunications facility  
24 obtained from such provider. If the provider or providers do not purchase the telecommunications  
25 facility, it shall be offered for public auction in the same manner as the division auctions excess  
26 rights-of-way.

**§17-2E-7. Multiple carriers in a single trench.**

1 (a) If the Division of Highways enters into an agreement with two or more  
2 telecommunications carriers, a consortium or other entity whose members, partners or other  
3 participants are two or more telecommunications carriers, or, if the division requires or allows two  
4 or more telecommunications carriers to share a single trench, the agreements entered into  
5 pursuant to this article shall require that the telecommunications carriers share the obligation of  
6 compensating the Division of Highways on a fair, reasonable and equitable basis, taking into  
7 consideration the proportionate uses and benefits to be derived by each telecommunications  
8 carrier from the trench, conduits, and other telecommunications facilities installed under the  
9 agreements.

10           (b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways  
11 from requiring every participating telecommunications carrier to bear joint and several liability for  
12 the obligations owed to the Division of Highways under the agreements.

13           (c) Any agreement requiring two or more telecommunications carriers to share the  
14 obligation of compensating the Division of Highways shall provide the division the right to review  
15 and audit the records and contracts of and among the participating carriers to ensure compliance  
16 with §17-2E-7(a) of this code.

**§17-2E-8. Existing policies.**

1           (a) The requirements set forth in this article do not alter existing rules, policies, and  
2 procedures relating to other utility facilities within a right-of-way or for accommodating utility  
3 facilities or other facilities under the control of the Division of Highways.

4           (b) The Division of Highways may consider the financial and technical qualifications of a  
5 telecommunications carrier when determining specific insurance requirements for contractors  
6 authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair  
7 telecommunications facilities with longitudinal access or wireless access to the right-of-way.

8           (c) If the Division of Highways authorizes longitudinal access, wireless access, or the use  
9 of, and access to, conduit or related facilities of the division for construction and installation of a  
10 telecommunications facility, the division may require an approved telecommunications carrier to  
11 install the telecommunications facility in the same general location as similar facilities already in  
12 place, coordinate their planning and work with other contractors performing work in the same  
13 geographic area, install in a joint trench when two or more telecommunications carriers are  
14 performing installations at the same time and equitably share costs between such carriers.

15           (d) The placement, installation, maintenance, repair, use, operation, replacement, and  
16 removal of telecommunications facilities with longitudinal access or wireless access to a right-of-  
17 way or that use or access conduit or related facilities of the division shall be accommodated only  
18 when in compliance with this code and Division of Highways rules, policies and guidelines.

19           (e) Access to a right-of-way must be administered in compliance with the  
20 Telecommunications Act of 1996, 47 U.S.C. §151, et seq., as amended.

**ARTICLE 4. STATE ROAD SYSTEM.**

**§17-4-17b. Relocation of public utility lines on highway construction projects.**

1           (a) Whenever the division reasonably determines that any public utility line or facility  
2 located upon, across, or under any portion of a state highway needs to be removed, relocated, or  
3 adjusted in order to accommodate a highway project, the division shall give to the utility  
4 reasonable notice in writing as mutually agreed, but not to exceed 18 months, directing it to begin  
5 the physical removal, relocation, or adjustment of such utility obstruction or interference at the  
6 cost of the utility, including construction inspection costs and in compliance with the rules of the  
7 division and the provisions of §29A-3-1 *et seq.* of this code.

8           (b) If the notice is in conjunction with a highway improvement project, it will be provided at  
9 the date of advertisement or award. Prior to the notice directing the physical removal, relocation,  
10 or adjustment of a utility line or facility, the utility shall adhere to the division's utility relocation  
11 procedures for public road improvements which shall include, but not be limited to, the following:

12           (1) The division will submit to the utility a letter and a set of plans for the proposed highway  
13 improvement project;

14           (2) The utility must within a reasonable time submit to the division a written confirmation  
15 acknowledging receipt of the plans and a declaration of whether or not its facilities are within the  
16 proposed project limits and the extent to which the facilities are in conflict with the project;

17           (3) If the utility is adjusting, locating, or relocating facilities or lines from or into the division's  
18 right-of-way, the utility must submit to the division plans showing existing and proposed locations  
19 of utility facilities.

20           (4) The utility's submission shall include with the plans a work plan demonstrating that the  
21 utility adjustment, location, or relocation will be accomplished in a manner and time frame  
22 established by the division's written procedures and instructions. The work plan shall specify the

23 order and calendar days for removal, relocation, or adjustment of the utility from or within the  
24 project site and any staging property acquisition or other special requirements needed to complete  
25 the removal, relocation, or adjustment. The division shall approve the work plan, including any  
26 requests for compensation, submitted by a utility for a highway improvement project if it is  
27 submitted within the established schedule and does not adversely affect the letting date. The  
28 division will review the work plan to ensure compliance with the proposed improvement plans and  
29 schedule.

30 (c) If additional utility removal, relocation, or adjustment work is found necessary after the  
31 letting date of the highway improvement project, the utility shall provide a revised work plan within  
32 30 calendar days after receipt of the division's written notification of the additional work. The  
33 utility's revised work plan shall be reviewed by the division to ensure compliance with the highway  
34 project or improvement. The division shall reimburse the utility for work performed by the utility  
35 that must be performed again as the result of a plan change on the part of the division.

36 (d) Should the utility fail to comply with the notice to remove, relocate, or adjust, the utility  
37 is liable to the division for direct contract damages, including costs, fees, penalties, or other  
38 contract charges, for which the division is proven to be liable to a contractor caused by the utility's  
39 failure to timely remove, relocate, or adjust, unless a written extension is granted by the division.  
40 The utility shall not be liable for any delay or other failure to comply with a notice to remove,  
41 relocate or adjust that is not solely the fault of the utility, including, but not limited to, the following:

42 (1) The division has not performed its obligations in accordance with the division's rules;

43 (2) The division has not obtained all necessary rights-of-way that affect the utility;

44 (3) The delay or other failure to comply by the utility is due to the division's failure to  
45 manage schedules and communicate with the utility;

46 (4) The division seeks to impose liability on the utility based solely upon oral  
47 communications or communications not directed to the utility's designated contact person;

48 (5) The division changes construction plans in any manner following the notice to remove  
49 or relocate and the change affects the utility's facilities; or

50 (6) Other good cause, beyond the control of and not the fault of the utility, including, but  
51 not limited to, labor disputes, unavailability of materials on a national level, act of God, or extreme  
52 weather conditions.

53 (e) In order to avoid construction delays and to create an efficient and effective highway  
54 program, the division may schedule program meetings with the public utility on a quarterly basis  
55 to assure that schedules are maintained.

56 (f) If a utility that is required by law to bear all or a portion of its own relocation costs elects  
57 to pursue a reimbursement agreement with the division pursuant to this subsection and provides  
58 the division with sufficient evidence to demonstrate that the utility is not adequately staffed,  
59 equipped, or capitalized to perform such relocation work with its own forces or contractors at a  
60 time convenient to and in coordination with the associated highway project, the division may pay  
61 for the associated relocation costs, including but not limited to design engineering, design review,  
62 construction, and inspection costs, out of the State Road Fund: *Provided*, That the utility shall  
63 reimburse the division in full for such portion of the relocation costs that it is required by law to  
64 bear within two years of the completion of the highway project. The division shall deduct from the  
65 utility's reimbursement amount any costs resulting from work performed as a result of plan  
66 changes made by the division. Before the division may pay any relocation costs, the division and  
67 the utility shall enter into a written reimbursement agreement containing terms that are mutually  
68 acceptable to the division and the utility seeking the reimbursement agreement.

69 (1) Preliminary engineering design work associated with utility relocations to be paid for  
70 by the division pursuant to a reimbursement agreement shall be completed by any of the following  
71 methods:

72 (A) The division's or the utility's internal forces;



73 (B) A consultant selected by the division if the contract is administered by the division:

74 Provided, That the selected consultant shall be pre-approved by the utility; or

75 (C) Inclusion as part of the highway construction contract let by the division as agreed to

76 by the utility: Provided, That the subcontractor performing the preliminary engineering design work

77 associated with the relocation is pre-approved by the utility.

78 (2) Utility relocation construction work paid for by the division pursuant to a reimbursement

79 agreement shall be completed by either of the following methods:

80 (A) A contract awarded by the division to the lowest qualified bidder based on an

81 appropriate competitive solicitation: Provided, That the lowest qualified bidder for utility relocation

82 construction work is pre-approved by the utility; or

83 (B) Inclusion as part of the highway construction contract let by the division as agreed to

84 by the utility: Provided, That the subcontractor performing the utility relocation construction work

85 is pre-approved by the utility.

86 (3) All design and construction work paid for by the division pursuant to a reimbursement

87 agreement is subject to the reasonable inspection and acceptance of the utility, whose

88 acceptance shall not be unreasonably withheld, and shall be performed in accordance with the

89 specifications and standards required by the utility.

90 (4) All relocation work performed pursuant to a reimbursement agreement shall conform

91 to applicable state and federal laws or regulations.

92 (5) The provisions of this subsection are completely voluntary and shall not be interpreted

93 to require any utility to enter into a reimbursement agreement with the division or avail itself of the

94 options authorized by this subsection.

95 (6) The division may propose rules for legislative approval in accordance with the

96 provisions of §29A-3-1 et seq. of this code, and the division may promulgate emergency rules

97 pursuant to the provisions of §29A-3-15 of this code in order to comply with this subsection.

**§17-4-17e. Utility relocation on state highway construction projects financed by proceeds of bonds or notes issued before July 1, 2021.**

1        Subject to the provisions of §17-4-17d of this code, and notwithstanding any other  
2 provisions to the contrary, whenever the Commissioner of Highways determines that any utility  
3 facility located upon, across, above, or under any portion of a state highway needs to be relocated  
4 in order to accommodate a highway project funded, in whole or in part, with proceeds of bonds or  
5 notes issued by the division, commissioner, West Virginia Parkways Authority, or the State of  
6 West Virginia on or after January 1, 2018, and on or before July 1, 2021, the commissioner shall  
7 notify the utility owning or operating the facility, which shall relocate the facility in accordance with  
8 this article and in accordance with the cost-sharing provisions of this section. The utility shall bear  
9 85 percent of any such relocation costs, and the Division of Highways shall bear 15 percent of  
10 any such relocation costs. The division's share shall be paid out of the State Road Fund or paid  
11 with other eligible funds, and shall be considered a cost of the highway project: *Provided, That*  
12 nothing in this section shall alter or amend the responsibility of the division to pay for the cost of  
13 utility facilities relocation when such costs are incurred to accommodate a highway project and  
14 such utilities maintain pre-existing property rights in their facilities' present location.