

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4651

BY DELEGATE BUTLER

[Introduced February 03, 2020; Referred to the
Committee on Technology and Infrastructure then the
Judiciary.]

1 A BILL to amend and reenact §17-2A-17 of the West Virginia Code, 1931, as amended, relating
2 to clarifying the powers and duties of the Division of Highways in acquiring property for
3 state road purposes to include depth as well as width; and updating antiquated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-17. Acquisition of property for state road purposes; “state road purposes” defined.

1 In addition to all other powers given and assigned to the commissioner in this chapter, the
2 commissioner may acquire, either temporarily or permanently, in the name of the ~~state road~~
3 ~~commission~~ Division of Highways all real or personal property, public or private, or any interests
4 or rights therein, including any easement, riparian right or right of access, deemed by the
5 commissioner to be necessary for present or presently foreseeable future state road purposes by
6 gift, lease, grant, bequest, devise, agreement, purchase, exchange, right of eminent domain or
7 other lawful means. ~~Such real~~ Real property may be acquired in fee simple or in any lesser estate
8 or interest therein, except in the case of a public road, only the right-of-way ~~only~~ shall be acquired.
9 Acquisition of such personal property shall be subject to the provisions of §17-2A-13 and §17-2A-
10 15 of this code. The acquisition of ~~any and~~ all such real and personal property is hereby declared
11 to be a cost of highway construction. Nothing in this section ~~shall be deemed to restrict or~~
12 ~~relinquish~~ restricts or relinquishes any right the state or any agency thereof now or hereafter
13 possesses or may exercise by virtue of the police power or other lawful authority.

14 As used in this article, state road purposes shall include provision for, but shall not be
15 limited to, the following:

16 (a) Constructing, establishing, laying out, widening, enlarging, extending, straightening,
17 reconstructing, relocating, grading, altering, improving and maintaining state roads;

18 (b) Rights-of-way for state roads, including those needed for such roads within
19 municipalities, such rights-of-way to be ~~as wide~~ to such width and depth as deemed necessary
20 for the project by the commissioner and shall include all material therein; Provided, That the

21 Division of Highways will pay just compensation to landowners for rights-of-way in accordance
22 with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §61
23 and applicable regulations contained in 49 CFR Part 24;

24 (c) Adequate drainage of state roads;

25 (d) Controlled-access facilities, as defined in §17-4-39 of this code, including existing and
26 vested rights of access, air, view and light, whether privately or publicly owned, and local service
27 roads to controlled-access facilities;

28 (e) Broadcasting stations, weighing stations, shops, equipment sheds, office buildings,
29 storage buildings and yards, snow fences, road maintenance or construction sites;

30 (f) Road-building material storage sites, quarry sites, gravel pits, sites for the acquisition
31 or manufacture of road-building materials including borrow pits, stockpile sites, waste-material
32 sites and access roads to any such sites or places;

33 (g) The culture and support of trees which benefit any state road by aiding in the
34 maintenance and preservation of the road;

35 (h) Landscape and roadside development, and maintenance thereof, within any state road
36 right-of-way, and the acquisition and maintenance of lands and interests in lands for the
37 restoration, preservation and enhancement of places of scenic beauty, and other objects of
38 attraction or scenic value adjacent to or near any state road, and the acquisition, development
39 and maintenance of publicly owned and controlled rest and recreation areas and sanitary and
40 other facilities reasonably necessary for the accommodation of the traveling public, within,
41 adjacent to or near the right-of-way of any road within the state road system;

42 (i) Development and maintenance of parking places, auto camps, camp sites, roadside
43 parks, historic roadside markers and sites, forest or timbered areas or other places of attraction
44 and scenic value which are adjacent to or near any state road and which in the judgment of the
45 commissioner are necessary for the convenience of the public and will contribute to the general
46 welfare and pleasure of the motoring public or road users;

47 (j) Maintenance of an unobstructed view of any portion of any state road in order to provide
48 for the safety of the traveling public;

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

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

51 (m) Elimination or prevention of hazardous or undesirable points of entry to state roads
52 from adjacent property;

53 (n) Acquisition of property, or any interest or right therein, for the purpose of exchanging
54 it for other property, or any interest or right therein, which the ~~commission~~ Division of Highways
55 is authorized to acquire by the other provisions of this section: *Provided*, That such substitute
56 property, or any interest or right therein, may be acquired by the commissioner by condemnation
57 only if the following conditions are satisfied: (1) ~~Money~~ Monetary compensation would be
58 substantially inadequate for the property, or interest or right therein, which the commissioner is
59 authorized to acquire by the other provisions of this section; and (2) the ~~commission~~ Division of
60 Highways has entered into a written agreement to exchange the substitute property, or the right
61 or interest therein, for the property, or right or interest therein, which is needed for state road
62 purposes, regardless of whether the person who has agreed to accept the exchange has the right
63 to condemn the substitute property, or the right or interest therein;

64 (o) Acquisition of real property, not needed ~~as such~~ for a state road, for the purpose of
65 moving and relocating thereon a building or other structure or appurtenance which is situated on
66 a lot or tract of land all or a portion of which is needed for a state road and which, after relocation,
67 will be suitable for the purpose for which it was used prior to its being relocated: *Provided*, That
68 such additional real property may be acquired by the commissioner by condemnation only if the
69 following conditions are satisfied: (1) The building or other structure or appurtenance is of
70 substantial value; (2) the real property on which it is to be relocated is not substantially improved
71 and is adjacent to or near the location from which it is to be removed; (3) the owner of the real
72 property needed for the state road has entered into a written agreement with the ~~commission~~

73 Division of Highways to accept in exchange the additional property with the relocated building or
74 structure or appurtenance thereon; (4) substantial savings in expenditure of state road funds will
75 result from condemning the additional property and relocating the building or structure or
76 appurtenance rather than condemning the lot or tract, or the portion thereof, on which the building
77 or other structure or appurtenance may be located; and (5) the real property with the relocated
78 building or structure or appurtenance thereon will be relatively equal in value to the real property
79 needed for the state road.

NOTE: The purpose of this bill is to clarify the powers and duties of the Division of Highways in acquiring property for state road purposes includes depth and to update antiquated language. A prior Legislature created a hybrid real estate ownership because DOH is not allowed to acquire property in fee. This bill clarifies the DOH takes what is necessary for road construction, repair and maintenance. Historically, DOH has cut through mountains and used the cut material for fill. The bill states that the commissioner takes a sufficient area in width and depth to construct a road. This should allow DOH to continue using fill material taken from one area of the project and use it in another. This does not include coal, oil, or gas deposits.

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