

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 827

FISCAL  
NOTE

BY SENATORS JEFFRIES, LINDSAY, ROMANO, BALDWIN,

STOLLINGS, SMITH, AND BEACH

[Introduced February 17, 2020; referred  
to the Committee on Transportation and  
Infrastructure; and then to the Committee on the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §17-30-1, §17-30-2, §17-30-3, and §17-30-4; and to amend and reenact §22-  
 3 1-6 of said code, all relating to the protection and repair of damage caused by the oil and  
 4 gas industry to our state roads; stating legislative findings and intent; defining terms;  
 5 prohibiting issuance of any permit under chapter 22 of this code until Division of Highways  
 6 agreement and permit issued; requiring a road use agreement and permit; specifying  
 7 terms and conditions for road use agreement and permit; requiring surety; specifying  
 8 minimum bond amounts; authorizing commissioner to increase bond requirements; and  
 9 authorizing the oil and gas operation to choose form of security provided.

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

**CHAPTER 17. ROADS AND HIGHWAYS.**

**ARTICLE 30. OIL AND GAS INDUSTRY ROAD USE.**

**§17-30-1. Legislative findings and intent.**

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing technologies and drilling practices  
 3 have created the opportunity for the efficient development of natural gas and oil contained in  
 4 underground shales and other geologic formations;

5 (2) These practices have resulted in a new type and scale of development and subsequent  
 6 transportation and storage of natural gas and oil that involve repeated travel of materials and  
 7 equipment which damages our roads and highways;

8 (3) The commissioner has broad authority to condition the issuance of encroachment  
 9 permits when, in the commissioner’s discretion, it is necessary to protect the safety of the traveling  
 10 public, prevent damage to public roads and highways when possible, and assure repair when  
 11 such damage occurs;

12 (4) Allowing the responsible development of our state’s natural gas and oil resources and  
 13 its necessary transport and storage will enhance the economy of our state and the quality of life

14 for our citizens while assuring the long-term protection of the state road system;

15 (5) Allowing the oil and gas industry to damage our state's roads and highways without  
 16 properly making any upgrades that may be necessary to support industry traffic or performing  
 17 necessary repairs and maintenance would be irresponsible; and

18 (6) The industry and the Division of Highways have attempted to address this issue with  
 19 limited success, but too many roads and highways remain in an unacceptable state of disrepair.

20 (b) The Legislature declares that the implementation of a responsible regulatory scheme  
 21 to address the road damage caused by natural gas development, transportation, and storage is  
 22 in the public interest and should be done in a manner that protects our citizens, our industry and  
 23 our roads and highways for current and future generations.

24 (c) The Legislature declares that the urgent need for action to address our damaged roads  
 25 requires imposition of the Oil and Gas Road Use Permit and Road Maintenance system to assure  
 26 that the Division of Highways is carrying out its statutory duties and that all of the members of the  
 27 oil and gas industry are and continue to be good corporate citizens and stewards of our public  
 28 lands.

**§17-30-2. Definitions.**

1 "Anticipated Damage" means the added potential stress placed on a highway or structure  
 2 due to the road degradation created during pipeline installation, drilling operations, compressor  
 3 station installation, well fracturing operations, and injection or storage well operations due to the  
 4 increased temporary use by the high volume of construction vehicles.

5 "Commissioner" means the Commissioner of the Division of Highways.

6 "Division" means the West Virginia Division of Highways.

7 "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in chapter  
 8 22 of this code;

9 "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity,  
 10 which are produced at the well in liquid form by ordinary production methods and which are not

11 the result of condensation of gas after it leaves the underground reservoirs;

12 “Oil and gas industry operation” or “operation” means a vertical or horizontal drilling  
13 operation, transmission or production pipeline facility, compressor station operation, storage or  
14 injection well or well abandonments that produce, or may produce, transport oil or gas that is  
15 permitted or regulated under chapter 22 of this code.

16 “Pipeline facility” means, without limitation, new and existing pipe, pipe rights-of-way and  
17 any equipment, facility, or building used in the transportation of oil or natural gas or the treatment  
18 of oil or natural gas during the course of transportation: *Provided*, That the term “pipeline facility”  
19 shall not include pipelines of four inches or less, measuring the inside diameter, that service a  
20 farm, commercial structure or residence.

**§17-30-3. Oil and gas industry road use permit and road maintenance agreement;**  
**requirements for environmental permits.**

1 (a) The West Virginia Department of Environmental Protection may not issue any permit  
2 authorized or required by chapter 22 of this code to any oil and gas industry operation until the oil  
3 and gas operation has first executed a road use agreement and received a permit from the  
4 Division of Highways.

5 (b) An oil and gas operation seeking to operate in West Virginia shall enter into a road use  
6 agreement with the division and submit a permit application on the form prescribed by the division.  
7 The division shall make available a permit form and instructions for its completion available to the  
8 public on its website.

9 (c) A road use agreement shall, at a minimum, include:

10 (1) The exact location of the project;

11 (2) The proposed routes to be used;

12 (3) Description of the road conditions and any bridges on the proposed routes;

13 (4) Specific responsibilities of the oil and gas operation, any contractors, and the division;

14 (5) A good faith estimate of the anticipated depreciation caused by the oil and gas

15 operation: *Provided*, That a single road use agreement per company may be executed when there  
16 are several proposed projects in the same area;

17 (6) A good faith estimate of the anticipated depreciation caused by any other industrial or  
18 commercial vehicles using the same or substantially the same routes;

19 (7) Any required roadway improvements designated by the division to be made before  
20 commencement and after completion of the project and who is responsible therefore;

21 (8) A provision for the oil and gas operation to perform all specified maintenance on the  
22 roadway during the course of the operation;

23 (9) Any terms or conditions necessary to assure continued and adequate ingress, egress,  
24 and safety along the proposed routes for the traveling public;

25 (10) Assurance that the division’s applicable rules, policies, guidelines and standards will  
26 be followed by the oil and gas operation;

27 (11) A provision that the oil and gas operation is responsible for the conduct of any  
28 contractors it may use and ensuring that the contractor adheres to the terms and conditions of  
29 the roadway use agreement and the permit; and

30 (12) A provision for sufficient surety, bonding, insurance, or a combination thereof to  
31 assure the terms and conditions of the agreement and permit are followed and that the interests  
32 of the traveling public using the proposed routes and the division are protected.

**§17-30-4. Surety required.**

1 (a) Every oil and gas industry operation, except pipeline operations, shall provide sufficient  
2 surety to repair all anticipated damage to the state’s roads and highways due to the operation. At  
3 a minimum the operation shall provide a bond equal to \$135,000 per paved mile, \$46,000 per tar  
4 and chipped mile, and \$36,000 per graveled mile: *Provided*, That bonds for oil and gas wells with  
5 less than 5,000 barrels of liquids or well abandonments shall be a minimum of \$50,000 per well.

6 (b) Pipeline operations shall provide sufficient surety to repair all anticipated damage to  
7 the state’s roads and highways due to the operation. At a minimum, the operation shall provide

8 a bond equal to \$200,000 per paved mile, \$60,000 per tar and chipped mile, and \$50,000 per  
9 graveled mile

10 (c) The commissioner may increase a bond amount if, in his or her discretion, the damage  
11 to the affected road or roads warrants an increase.

12 (d) The commissioner may authorize a bond sufficient to cover multiple roads in a district  
13 or statewide if, in his or her discretion, the needs of the state and the operation will be adequately  
14 protected.

15 (e) If multiple roads are included in a bond, roads may be added or removed from the bond  
16 as they are initiated or completed. Roads may be removed from the bond only after the division  
17 has determined that the road has been repaired to the division’s specifications and standards.

18 (f) The forms of the security provided pursuant to this section may include, at the option  
19 of the operation, surety bonding, collateral bonding (including cash and securities), letters of  
20 credit, establishment of an escrow account, self-bonding, or a combination of these methods.

21 (g) The division is authorized to pursue an action for damages attributable to the  
22 operation’s activities that exceed the bonded amount.

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

**§22-1-6. Secretary of the Department of Environmental Protection.**

1 (a) The secretary is the chief executive officer of the department. Subject to §22-1-7 of  
2 this code and other provisions of law, the secretary shall organize the department into such  
3 offices, sections, agencies and other units of activity as may be found by the secretary to be  
4 desirable for the orderly, efficient and economical administration of the department and for the  
5 accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief  
6 of staff, assistants, hearing officers, clerks, stenographers, and other officers, technical personnel,  
7 and employees needed for the operation of the department and may prescribe their powers and  
8 duties and fix their compensation within amounts appropriated.

9 (b) The secretary has the power to and may designate supervisory officers or other officers  
10 or employees of the department to substitute for him or her on any board or commission  
11 established under this code or to sit in his or her place in any hearings, appeals, meetings, or  
12 other activities with such substitute having the same powers, duties, authority, and responsibility  
13 as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to  
14 supervisory officers or other officers or employees of the department his or her powers, duties,  
15 authority, and responsibility relating to issuing permits, hiring and training inspectors and other  
16 employees of the department, conducting hearings and appeals, and such other duties and  
17 functions set forth in this chapter or elsewhere in this code: Provided, That the secretary may not  
18 delegate or authorize issuance of a permit to any oil and gas industry operation, vertical or  
19 horizontal drilling operation, transmission or production pipeline facility, compressor station  
20 operation, storage or injection well, or well abandonments that are permitted or regulated under  
21 chapter 22 of this code unless such operation has a valid road use agreement and permit from  
22 the Division of Highways required by §17-30-1 et seq. of this code.

23 (c) The secretary has responsibility for the conduct of the intergovernmental relations of  
24 the department, including assuring:

25 (1) That the department carries out its functions in a manner which supplements and  
26 complements the environmental policies, programs, and procedures of the federal government,  
27 other state governments, and other instrumentalities of this state; and

28 (2) That appropriate officers and employees of the department consult with individuals  
29 responsible for making policy relating to environmental issues in the federal government, other  
30 state governments, and other instrumentalities of this state concerning differences over  
31 environmental policies, programs, and procedures and concerning the impact of statutory law and  
32 rules upon the environment of this state.

33 (d) In addition to other powers, duties, and responsibilities granted and assigned to the  
34 secretary by this chapter, the secretary is authorized and empowered to:

35           (1) Sign and execute in the name of the state by the Department of Environmental  
36 Protection any contract or agreement with the federal government or its departments or agencies,  
37 subdivisions of the state, corporations, associations, partnerships, or individuals: *Provided*, That  
38 the powers granted to the secretary to enter into agreements or contracts and to make  
39 expenditures and obligations of public funds under this subdivision may not exceed or be  
40 interpreted as authority to exceed the powers granted by the Legislature to the various  
41 commissioners, directors, or board members of the various departments, agencies, or boards that  
42 comprise and are incorporated into each secretary's department pursuant to the provisions of  
43 chapter five-f of this code;

44           (2) Conduct research in improved environmental protection methods and disseminate  
45 information to the citizens of this state;

46           (3) Enter private lands to make surveys and inspections for environmental protection  
47 purposes; to investigate for violations of statutes or rules which the department is charged with  
48 enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for  
49 the purposes of this chapter include consent agreements; and to otherwise enforce the statutes  
50 or rules which the department is charged with enforcing;

51           (4) Require any applicant or holder of a permit to install, establish, modify, operate, or  
52 close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer,  
53 director or manager of the applicant or permittee; any person owning a five percent or more  
54 interest, beneficial or otherwise, in the applicant's or permittee's business; or any other person  
55 conducting or managing the affairs of the applicant or permittee or of the proposed licensed  
56 premises, in whole or in part. These fingerprints may be used to obtain and review any police  
57 record for the purposes ~~set~~ that may be relevant pursuant to §22-15-5 of this code, and to use  
58 the fingerprints furnished to conduct a criminal records check through the Criminal Identification  
59 Bureau of the West Virginia State Police and a national criminal history check through the Federal  
60 Bureau of Investigation. The results of the checks shall be provided to the secretary.



61 (5) Acquire for the state in the name of the Department of Environmental Protection by  
62 purchase, condemnation, lease, or agreement, or accept or reject for the state, in the name of the  
63 Department of Environmental Protection, gifts, donations, contributions, bequests, or devises of  
64 money, security, or property, both real and personal, and any interest in property;

65 (6) Provide for workshops, training programs, and other educational programs, apart from  
66 or in cooperation with other governmental agencies, necessary to ensure adequate standards of  
67 public service in the department. The secretary may provide for technical training and specialized  
68 instruction of any employee. Approved educational programs, training, and instruction time may  
69 be compensated for as a part of regular employment. The secretary is authorized to pay out of  
70 federal or state funds, or both, as such funds are available, fees and expenses incidental to the  
71 educational programs, training, and instruction. Eligibility for participation by employees shall be  
72 in accordance with guidelines established by the secretary;

73 (7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and  
74 enter into agreements in accordance with the provisions of section seven-a, article eleven of this  
75 chapter. Prior to issuing any certification the secretary shall solicit from the Division of Natural  
76 Resources reports and comments concerning the possible certification. The Division of Natural  
77 Resources shall direct the reports and comments to the secretary for consideration; and

78 (8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel  
79 to perform all legal services for the secretary and the department, including, but not limited to,  
80 representing the secretary, any chief, the department, or any office thereof in any administrative  
81 proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call  
82 upon the Attorney General for legal assistance and representation as provided by law.

83 (e) The secretary shall be appointed by the Governor, by and with the advice and consent  
84 of the Senate, and serves at the will and pleasure of the Governor.

85 (f) At the time of his or her initial appointment, the secretary must be at least 30 years old  
86 and shall be selected with special reference and consideration given to his or her administrative

87 experience and ability, to his or her demonstrated interest in the effective and responsible  
88 regulation of the energy industry and the conservation and wise use of natural resources. The  
89 secretary must have at least a bachelor's degree in a related field and at least three years of  
90 experience in a position of responsible charge in at least one discipline relating to the duties and  
91 responsibilities for which the secretary will be responsible upon assumption of the office. The  
92 secretary may not be a candidate for or hold any other public office, may not be a member of any  
93 political party committee and shall immediately forfeit and vacate his or her office as secretary in  
94 the event he or she becomes a candidate for or accepts appointment to any other public office or  
95 political party committee.

96 (g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and  
97 is allowed and shall be paid necessary expenses incident to the performance of his or her official  
98 duties. Prior to the assumption of the duties of his or her office, the secretary shall take and  
99 subscribe to the oath required of public officers prescribed by section five, article IV of the  
100 Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in  
101 the penal sum of \$10,000, which executed oath and bond will be filed in the Office of the Secretary  
102 of State. Premiums on the bond shall be paid from the department funds.

NOTE: The purpose of this bill is to protect and repair the state's roads damaged by oil and gas industry operations. The bill requires a permit and a road use agreement and specifies bonding requirements.

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