

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 522**

SENATORS SMITH, MAYNARD, SYPOLT, TARR, PLYMALE,

CLINE, RUCKER, AND MARONEY, *original sponsors*

[Originating in the Committee on Finance;

Reported on February 22, 2019]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §17-3-11; and to amend said code by adding thereto a new article, designated  
3 §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating to enhancing  
4 maintenance and repair of the state's roads and highways; creating the Special Road  
5 Repair Fund as a sub-account of the State Road Fund; providing for a general revenue  
6 allocation for fiscal years 2020 and 2021 into the fund; creating the Enhanced Road Repair  
7 and Maintenance Program; stating legislative finding and purpose of program; requiring  
8 Division of Highways county supervisors consult with county commissions and legislators  
9 to submit project requests to the Division of Highways; setting forth a funding formula;  
10 setting forth requirements concerning bidding, vendors, and contracts with private  
11 vendors; specifying uses of Special Road Repair Fund; defining terms; providing  
12 requirements for Commissioner of Highways and districts; requiring for rulemaking; and  
13 requiring reporting by Division of Highways and Legislative Auditor.

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

**ARTICLE 3. STATE ROAD FUND.**

**§17-3-11. Special Road Repair Fund.**

1 (a) There is created a special sub-account in the State Road Fund, designated the Special  
2 Road Repair Fund, to be expended solely for the purposes specified in §17-30-1 et seq. of this  
3 code for the maintenance and repair of the state's roads and highways.

4 (b) The Special Road Repair Fund shall be funded by a \$110,000,000 appropriation for  
5 fiscal year 2020 and an additional appropriation of \$110,000,000 for fiscal year 2021. These  
6 funds shall be allocated as set forth in §17-30-3 of this code.

**ARTICLE 30. ENHANCED ROAD REPAIR AND MAINTENANCE PROGRAM.**

**§17-30-1. Legislative finding; purpose.**

1 The Legislature finds that the Division of Highways, through no fault of its own, struggles  
2 to maintain roadways to the expectation of the citizens of this state. The purpose of the Enhanced  
3 Road Maintenance Program established in this article is to increase the utilization of private

4 vendor contractors to provide maintenance and road repair services for the Division of Highways  
5 in districts where there is an established need so that this state's roads will be properly maintained  
6 and usable by the citizens of this state.

**§17-30-2. Establishment of the Enhanced Road Repair and Maintenance Program.**

1 (a) The Enhanced Road Maintenance Program is created within the Division of Highways,  
2 to be administered by the division in accordance with the provisions of this article.

3 (b) To accomplish the goals of the program, the Division of Highway county supervisor in  
4 each county in consultation with the county commission of each county and any currently elected  
5 member of the Legislature whose district overlaps any portion of the county may submit to the  
6 Division of Highways a list of road repair and maintenance projects in need of repair in their  
7 county. These projects should be limited to roads that are classified as nonfederal aid eligible  
8 county roads. The projects should be listed in priority order and should be based upon the funds  
9 available to the county from the funding formula set forth in §17-30-3 of this code. This request  
10 is to be made to the Division of Highways by July 1, 2019, and again by July 1, 2020. The Division  
11 of Highways is authorized to award funding for these projects based upon the funding allocation  
12 formula set forth in §17-30-3 of this code. This funding would be the total available to all the  
13 counties in the district regardless of whether the county submitted a request for road repair or  
14 maintenance. Work on all projects is subject to the funding limitations set forth in §17-30-3 of this  
15 code.

16 (c) Following receipt of a priority list from all counties in a district, the Division of Highways  
17 shall determine the available funding from the funding formula and ascertain the funding available  
18 to address the submitted projects in the district. If funding is insufficient to address all submitted  
19 projects, the Division of Highways shall notify all the county commissions in the district of the  
20 projects which funding is not sufficient to complete. The funding may only be used for the  
21 purposes set forth in this article and for the projects submitted to the Division of Highways.

22           (d) The Division of Highways may contract with a private contractor or private contractors  
23 to perform nonfederal aid road repairs and maintenance activities if 70 percent of the core  
24 maintenance projects proposed for completion in the previous year have not been completed and  
25 based upon the award allocation and for the projects as submitted to the Division of Highways as  
26 set forth in subsection (b) of this section. These repairs shall include, but are not limited to,  
27 pothole repair, paving, ditching, and mowing on and along each district's roadways. For purposes  
28 of this article, "district" means one of the management areas of the state, which include one or  
29 more counties, established by the Division of Highways, with each district headed by a separate  
30 district engineer or manager.

31           (e) The division may contract with vendor contractors to complete repair and maintenance  
32 activities for any district if 70 percent of the core maintenance projects proposed in that district for  
33 completion in the previous year have not been completed. Completion of the project by the vendor  
34 is subject, however, to the availability of funds and the availability of acceptable bids from contract  
35 vendors.

36           (f) The Division of Highways and applicable district shall ensure that, alongside roads  
37 being paved, all drainage work, including any necessary ditching and installation of culverts, if  
38 necessary, has been performed in the state's rights-of-way prior to such paving work.

**§17-30-3. Funding formula for Special Road Repair Fund.**

1           (a) Funding for the grants shall be proportionately based upon the total mileage of  
2 nonfederal aid eligible county routes in each district as those figures are maintained by the  
3 Division of Highways: *Provided*, That no county shall receive less than \$1,500,000 of the available  
4 funding.

5           (b) The Division of Highways shall promulgate emergency rules pursuant to the provisions  
6 of §29A-3-15 of this code to develop a funding mechanism proportionately based upon the  
7 nonfederal aid mileage in each county.

**§17-30-4. Funding from Special Road Repair Fund; bidding, contracting, and vendor requirements.**

1 (a) Funds in the Special Road Repair Fund created by §17-3-11 of this code shall be  
2 allocated by the West Virginia Commissioner of Highways for the payment of vendor contracts  
3 among the districts for repair and maintenance of nonfederal aid roads.

4 (b) The division must the use funds for the purpose of contracting with a vendor to perform  
5 certain repair and maintenance activities in the district as set forth in this article. The Division of  
6 Highways may provide supplemental funds to a district in need if additional funds are available in  
7 the Special Road Repair Fund. Any additional funds shall be used for completion of the projects  
8 originally submitted by the county commission.

9 (c) The Division of Highways shall process bids and award contracts in accordance with  
10 the current bid and contract review processing requirements of the division.

11 (d) Notwithstanding any other provision of this code to the contrary, the bidding and vendor  
12 contracting process provided for in this article shall be conducted in accordance with the most  
13 efficient procedures available to the Division of Highways. The division may only require that the  
14 vendor provide the applicable insurance coverage and necessary bond and surety.

15 (e) Vendor contractors performing work pursuant to a contract as provided in this article  
16 shall follow all work, operating, and safety procedures and requirements prescribed by the  
17 Division of Highways.

**§17-30-5. Reporting requirements by Division of Highways and Legislative Auditor.**

1 (a) By November 1, 2019, and on November 1 of each year thereafter, the Division of  
2 Highways shall present a report to the Joint Committee on Government and Finance as to the  
3 status and progress of the program together with any suggested legislation to address any issues  
4 related thereto no later than November of the following fiscal year. After November 2022, such  
5 reports will no longer be required.

6           (b) By December 1, 2019, and by December biennially thereafter, the Legislative Auditor,  
7 in a separate audit report, shall review the program to determine efficacy, economic responsibility,  
8 and other such factors relating to the program and submit a report of his or her findings, together  
9 with any suggested legislation to improve the efficiency and to more economically carry out the  
10 purposes of this article.