

# WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 3016**

BY DELEGATES BUTLER AND PORTERFIELD

(BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION)

[Passed March 8, 2019; in effect ninety days from  
passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2019 MAR 26 P 1:41

FILED

HB 3016

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1 AN ACT to repeal §29-2A-9, §29-2A-17, §29-2A-18, §29-2A-19, §29-2A-21, §29-2A-22, §29-2A-  
2 23, §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and §29-2A-28 of the Code of West  
3 Virginia, 1931, as amended; and to amend and reenact §29-2A-1, §29-2A-2, §29-2A-3,  
4 §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-11, §29-2A-14 and §29-2A-20 of said  
5 code, all relating to the State Aeronautics Commission; repealing provisions relating to  
6 state airways systems, investigations, inquiries and hearings, disposition of fees, joint  
7 hearings, cooperation with and reports to agencies of state the United States, the use of  
8 state and municipal facilities and services, commission orders, notices and opportunity for  
9 hearings, judicial review of commission actions, criminal penalties and exchange of  
10 information for violations of provisions of article, severability, repeal of inconsistent  
11 provisions, and short title; removing antiquated and inoperable provisions modifying and  
12 deleting definitions; continuing the State Aeronautics Commission; modifying and  
13 updating membership requirements, powers, and duties of the commission; setting forth  
14 quorum and meeting requirements; providing for the organization and operation of the  
15 commission; modifying provisions related to the director of the commission; updating  
16 provisions related to funding and federal aid; continuing general powers related to  
17 planning, establishing, constructing, maintaining, and operating of airports; removing  
18 requirement for delivery of abstract of conviction to commission; and clarifying authority  
19 to require presentment of certificate, permit, rating or license and to enforce aeronautics  
20 laws.

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

## **ARTICLE 2A. STATE AERONAUTICS COMMISSION.**

### **§29-2A-1. Definitions.**

1 As used in the statutes of West Virginia, unless the context otherwise requires:

2 “Aeronautics” means the art and science of flight, including, but not limited to, transportation  
3 by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants

4 and accessories, including the repair, packing, and maintenance of parachutes; the design,  
5 establishment, construction, extension, operation, improvement, repair, or maintenance of  
6 airports or other air navigation facilities; and education about aeronautics.

7 "Aircraft" means any contrivance now known, or hereafter invented, used or designed for  
8 navigation of or flight in the air.

9 "Air navigation" or "navigation" means the operation or navigation of aircraft in the air space  
10 over this state, or upon any airport within this state.

11 "Air navigation facility" means any facility other than one owned or controlled by the federal  
12 government used in, available for use in, or designed for use in aid of air navigation, including  
13 airports, and any structures, mechanisms, lights, beacons, markers, communications system or  
14 other instrumentalities or devices used or useful as an aid or constituting an advantage or  
15 convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient  
16 operation or maintenance of an airport, and any combination of any or all of such facilities

17 "Airport" means any area of land or water which is used, or intended for use, for the landing  
18 and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport  
19 buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities  
20 located thereon.

21 "Commission" means the West Virginia State Aeronautics Commission.

22 "Director" means the director of the Commission.

23 "Municipality" means any county, city, town, village, or other political subdivision of this state.

24 "Municipal" means pertaining to a municipality as herein defined.

25 "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in  
26 the airspace over this state or upon the ground within this state.

27 "Person" means any individual, firm, partnership, corporation, company, association, joint  
28 stock association, or body politic and includes any trustee, receiver, assignee, or other similar  
29 representative thereof.

**§29-2A-2. Short title; continuation of commission; membership and compensation; quorum.**

1 (a) This article may be cited as the "State Aeronautics Commission Act".

2 (b) The West Virginia State Aeronautics Commission is hereby continued. The current  
3 members shall retain their seats until the expiration of their terms and may be reappointed. The  
4 commission consists of five members appointed by the Governor, by and with the advice and  
5 consent of the Senate. One member shall be the Secretary of Transportation ex officio, whose  
6 term shall continue for the period that he or she holds the office of Secretary of Transportation.  
7 The other four members of the commission are initially appointed by the Governor, one to serve  
8 for a term of one year, one to serve for a term of two years, one to serve for a term of three years,  
9 and one to serve for a term of four years. The successors of the members initially appointed as  
10 provided herein shall be appointed for terms of four years each in the same manner as the  
11 members originally appointed under this section, except that any person appointed to fill a  
12 vacancy occurring prior to the expiration of the term for which his or her predecessor was  
13 appointed shall be appointed only for the remainder of such term. Each member shall serve until  
14 the appointment and qualification of his or her successor. No more than three members of the  
15 commission shall be members of the same political party. All members of the commission shall  
16 be citizens and residents of this state. The members of the commission who are appointed by the  
17 Governor as provided by this section shall be selected with due regard to their fitness by reason  
18 of their aeronautical, legal, administrative, or management knowledge. In making such  
19 appointments, the Governor shall, so far as may be possible and practicable, select the several  
20 members from different geographical sections of the state.

21 (c) No member may receive any salary for his or her services, but each shall be  
22 reimbursed for actual and necessary expenses incurred by such member in the performance of  
23 his or her duties in accordance with state travel rules.

24 (d) Three members are a quorum, and a quorum is necessary to conduct business.  
25 Members may participate in any meeting by phone.

**§29-2A-3. Powers and duties of commission.**

1 The commission may enter into any contracts necessary to the execution of the powers  
2 granted to it by this article. It is empowered and directed to encourage, foster, and assist in the  
3 development of aeronautics in this state and to encourage the establishment of airports and air  
4 navigation facilities. It shall cooperate with and assist the federal government, the municipalities  
5 of this state, and other persons in the development of aeronautics and shall act to coordinate the  
6 aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate  
7 with the commission in the development of aeronautics and aeronautics facilities in this state. The  
8 commission is hereby given the power and authority to make such rules, policies, and guidelines  
9 as it may deem necessary and advisable for the public safety, governing the designing, laying  
10 out, locating, building, equipping and operating of all airports and the conduct of all other phases  
11 of aeronautics to effectuate the requirements of this article.

12 (1) The commission shall keep on file with the Secretary of State, and at the principal office  
13 of the commission, a copy of its rules and orders having general effect for public inspection. It  
14 shall provide for the publication and general distribution of all its orders, rules, and other  
15 information of public interest. Copies of any such orders, rules, and other information shall be  
16 made available electronically and provided to any person interested, free of charge, upon request.  
17 The publication and distribution of any such order or rule proposed for legislative approval in  
18 accordance with the provisions of §29A-3-1 *et seq.* of this code shall be sufficient notice to the  
19 public of the provisions, requirements, and effect thereof.

20 (2) Except where otherwise prohibited, the commission is authorized to permit the West  
21 Virginia Board of Treasury Investments or the West Virginia Investment Management Board to  
22 invest, as provided by this code, any funds received by the commission pursuant to the provisions  
23 of this code.

**§29-2A-4. Organization of commission; meetings; reports; offices.**

1           (a) The commission shall make, and may from time to time amend, rules for the  
2 administration of the powers granted to it by this article. The commission shall organize by electing  
3 from among its members a chairperson who shall serve as such for a period of two years. The  
4 chairperson is authorized to sign documents, execute contracts, and otherwise act for and in the  
5 name of the commission in all matters within the lawful powers of the commission and authorized  
6 by a majority of its members.

7           (b) The commission shall determine the number, date, and place of its regular meetings,  
8 but at least one meeting shall be held annually at the commission's established offices in the city  
9 of Charleston. Whenever the convenience of the public or of interested persons may be promoted,  
10 or delay or expense may be prevented, the commission may hold meetings at any other place  
11 designated by it.

12           (c) The commission shall report in writing to the Governor on or before August 31 of each  
13 year. The report shall contain a summary of the commission's proceedings during the preceding  
14 fiscal year, a detailed and itemized statement of all revenue received, and all expenditures made  
15 by or on behalf of the commission, such other information which may be necessary or useful, and  
16 any additional information which may be requested by the Governor. The fiscal year of the  
17 commission shall conform to the fiscal year of the state.

18           (d) An office shall be established and maintained by the commission in the city of  
19 Charleston.

**§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and  
duties; staff.**

1           (a) A director of aeronautics shall be appointed by the commission, with the advice and  
2 consent of the Secretary of Transportation, who shall serve for an indefinite term at the pleasure  
3 of the commission. The director shall be appointed with due regard to his or her fitness as an  
4 administrator. The director shall devote his or her time to the duties of his or her office as required

5 and prescribed by this article and may not have any pecuniary interest in, or any stock in, or bonds  
6 of, any civil aeronautical enterprise. The Secretary of Transportation, in consultation with the  
7 commission, shall determine the director's compensation. The compensation shall conform in  
8 general to the compensation received by persons occupying positions of similar importance and  
9 responsibility with other agencies of this state. The director's compensation may not be paid, in  
10 whole or in part, from grant funds received by the commission. The director shall be reimbursed  
11 for all traveling and other expenses incurred by him or her in the discharge of his or her official  
12 duties in accordance with state travel rules. The director shall be the executive officer of the  
13 commission and under its supervision shall administer the provisions of this article and the rules  
14 and orders established thereunder and all applicable laws of the state. The director shall attend,  
15 but not vote, at all meetings of the commission. The director serves as the secretary of the  
16 commission and is in charge of its offices and responsible to the commission for the preparation  
17 of reports and the collection and dissemination of data and other public information relating to  
18 aeronautics. At the direction of the commission, the director is authorized to execute contracts  
19 entered into by the commission which are legally authorized and for which funds are provided in  
20 any state or federal appropriations act.

21 (b) The commission may, by written order filed in its office, delegate to the director any of  
22 the powers or duties vested or imposed upon it by this article. Any delegated powers and duties  
23 may be exercised by the director in the name of the commission. The commission may also  
24 employ any necessary administrative, engineering, technical, and clerical staff.

**§29-2A-6. State financial assistance for county, municipal, and regional airports.**

1 The commission, out of any appropriation made to it by the Legislature or out of any funds  
2 at its disposal, may make funds available by grant or otherwise to counties, municipalities, and  
3 regional airport authorities, created under the provisions of chapter eight of this code, for the  
4 planning, acquisition, construction, improvement, maintenance, or operation of airports owned or  
5 operated or to be owned or operated by such counties, municipalities, or regional airport

6 authorities. Acceptance of any moneys so made available to any such county, municipality, or  
7 regional airport authority, shall constitute consent by the recipient that a reasonable use of the  
8 airport may be made, upon request of the commission, by the United States government, the  
9 state, or any of their respective agencies, including the State Aeronautics Commission and the  
10 National Guard of West Virginia for state purposes related or incidental to aeronautics.

**§29-2A-7. Federal aid.**

1 (a) The commission is authorized to accept federal aid either outright or by way of  
2 matching funds, in whole or in part, as may be required by the federal government. When  
3 matching funds are available to the commission, they may be used in compliance with the  
4 provisions of the laws and regulations of the United States for the expenditure of federal moneys  
5 for airports and other air navigation facilities.

6 (b) The commission is authorized to accept and receive federal moneys and other moneys,  
7 either public or private, for and on behalf of this state, or any municipality thereof, for the planning,  
8 acquisition, construction, improvement, maintenance, and operation of airports and other air  
9 navigation facilities. The funds may be expended regardless of whether the work is to be done by  
10 the state or a municipality, or jointly. If the funds are from the United States, they shall be  
11 expended upon such terms and conditions as are or may be prescribed by the laws of the United  
12 States and any rules or regulations made thereunder. The commission is hereby designated as  
13 the agency of the state, and is authorized to and may act as agent of any municipality of this state  
14 upon the request of such municipality, in accepting and receiving moneys on its behalf for airports  
15 or other air navigation facility purposes, and in contracting for the planning, acquisition,  
16 construction, improvement, maintenance, or operation of airports or other air navigation facilities,  
17 financed, either in whole or in part, by federal moneys. A municipality is authorized to and may  
18 enter into an agreement with the commission prescribing the terms and conditions of such agency  
19 in accordance with federal laws, rules, and regulations and with this article. All moneys paid by  
20 the United States government shall be retained by the state or paid to said municipalities under

21 such terms and conditions as may be imposed by the United States government in making such  
22 grants.

23 (c) All contracts for the planning, acquisition, construction, improvement, maintenance, and  
24 operation of airports, or other air navigation facilities made by the commission, either as the agent  
25 of the state or as the agent of any municipality therein, shall be made pursuant to the laws of this  
26 state governing the making of like contracts: *Provided*, That where the planning, acquisition,  
27 construction, improvement, maintenance, and operation of any airport or other air navigation  
28 facility is financed wholly or partially with federal moneys, the commission, as agent of the state  
29 or of any municipality thereof, may let contracts in the manner prescribed by the federal  
30 authorities, acting under the laws of the United States, and any rules or regulations made  
31 thereunder, notwithstanding any other state law to the contrary.

32 (d) All moneys accepted for disbursement by the commission pursuant to this section shall  
33 be deposited in the State Treasury, and, unless otherwise prescribed by the authority from which  
34 the money is received, kept in separate funds, designated according to the purposes for which  
35 the moneys were made available, and held by the state in trust for such purposes. All such  
36 moneys are hereby appropriated for the purposes for which they were made available and shall  
37 be expended in accordance with federal laws and regulations and this article. The commission is  
38 authorized, whether acting for this state or as the agent of any municipality therein, when  
39 requested by the United States government or any agency or department thereof, or when  
40 requested by the state or municipality for which the money has been made available, to disburse  
41 such moneys for the designated purposes, but this shall not preclude any other authorized method  
42 of disbursement.

43 (e) The state or any municipality therein is authorized to cooperate with the government of  
44 the United States, and any agency or department thereof, in the acquisition, construction,  
45 improvement, maintenance, and operation of airports and other air navigation facilities in this state  
46 and is authorized to accept federal aid, either by way of outright grant or by matching the funds,

47 in whole or in part, as may be required, and to comply with the provisions of the laws of the United  
48 States and any rules or regulations made thereunder for the expenditure of federal moneys upon  
49 such airports and other navigation facilities.

**§29-2A-8. Establishment and operation of state airports.**

1 (a) The commission is authorized on behalf of and in the name of the state, out of  
2 appropriations and other moneys made available for such purposes, to plan, establish, construct,  
3 maintain, and operate airports and air navigation facilities within the state. For these purposes the  
4 commission may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire such  
5 property, real or personal, as is necessary to permit safe and efficient operation of the airports  
6 and air navigation facilities. In like manner, the commission may acquire existing airports and air  
7 navigation facilities: *Provided*, That it shall not acquire or take over any airport or air navigation  
8 facility owned or controlled by a municipality of this or any other state without the consent of the  
9 municipality. The commission may by sale, lease, or otherwise, dispose of any such property,  
10 airport, air navigation facility, or portion thereof or interest therein. Any disposal by lease shall be  
11 made pursuant to the terms of §8-28-7 of this code. Any disposal by sale or otherwise shall be in  
12 accordance with the laws of this state governing the disposition of other property of the state,  
13 except that in the case of disposal to any municipality or state government or the United States  
14 for aeronautical purposes incident thereto the sale or other disposal may be effected in such  
15 manner and upon such terms as the commission determines are in the best interest of the state.

16 (b) Nothing contained in this article shall be construed to limit any right, power, or authority  
17 of the state or a municipality to regulate airport hazards by zoning.

18 (c) The commission may exercise any powers granted by this section jointly with any  
19 municipalities or agencies of the state government, with other states or their municipalities, or with  
20 the United States.

21 (d) In the condemnation of property authorized by this section, the commission shall  
22 proceed in the name of the state in the manner provided by §54-1-1, *et seq.* of this code.

**§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.**

1 (a) Any person who:

2 (1) Operates an aircraft in this state while:

3 (A) He or she is under the influence of alcohol; or

4 (B) He or she is under the influence of any controlled substance; or

5 (C) He or she is under the influence of any other drug; or

6 (D) He or she is under the combined influence of alcohol and any controlled substance or  
7 any other drug; or

8 (E) He or she has an alcohol concentration in his or her blood of four hundredths of one  
9 percent or more, by weight; and

10 (2) When so operating an aircraft does any act forbidden by law or fails to perform any  
11 duty imposed by law in the operation of such aircraft, which act or failure proximately causes  
12 bodily injury to any person other than himself or herself, is guilty of a felony, and, upon conviction  
13 thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of not less than  
14 one year nor more than five years, or in the discretion of the court, be confined in jail not more  
15 than one year and be fined not more than \$500.

16 (b) Any person who:

17 (1) Operates an aircraft in this state while:

18 (A) He or she is under the influence of alcohol; or

19 (B) He or she is under the influence of any controlled substance; or

20 (C) He or she is under the influence of any other drug; or

21 (D) He or she is under the combined influence of alcohol and any controlled substance or  
22 any other drug; or

23 (E) He or she has an alcohol concentration in his or her blood of four hundredths of one  
24 percent or more, by weight;

25           (2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not  
26 more than one year or fined not more than \$500, or both, in the discretion of the court.

27           (c) Any person who:

28           (1) Knowingly permits his or her aircraft to be operated in this state by any other person  
29 who is:

30           (A) Under the influence of alcohol; or

31           (B) Under the influence of any controlled substance; or

32           (C) Under the influence of any other drug; or

33           (D) Under the combined influence of alcohol and any controlled substance or any other  
34 drug; or

35           (E) Has an alcohol concentration in his or her blood of four hundredths of one percent or  
36 more, by weight;

37           (2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not  
38 more than one year or fined not more than \$500, or both, in the discretion of the court.

39           (d) A person violating any provision of subsection (a) of this section is, for the second  
40 offense under this section, guilty of a felony, and, upon conviction thereof, shall be imprisoned in  
41 the penitentiary for a definite term of imprisonment of not less than one year nor more than five  
42 years.

43           (e) A person violating any provision of subsection (b) or (c) of this section is, for the second  
44 offense under this section, guilty of a felony, and, upon conviction thereof, shall be imprisoned in  
45 the penitentiary for a definite term of imprisonment of not less than one year nor more than three  
46 years.

47           (f) For purposes of subsections (d) and (e) of this section relating to second and  
48 subsequent offenses, the following types of convictions shall be regarded as convictions under  
49 this section:

50           (1) Any conviction under the provisions of the prior enactment of this section;

51 (2) Any conviction under a statute of the United States or of any other state of an offense  
52 which has the same elements as an offense described in subsection (a), (b) or (c) of this section.

53 (g) A person may be charged in a warrant or indictment or information for a second or  
54 subsequent offense under this section if the person has been previously arrested for or charged  
55 with a violation of this section which is alleged to have occurred within the applicable time periods  
56 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the  
57 charges for the alleged previous offense. In such case, the warrant or indictment or information  
58 must set forth the date, location and particulars of the previous offense or offenses. No person  
59 may be convicted of a second or subsequent offense under this section unless the conviction for  
60 the previous offense has become final.

61 (h) The fact that any person charged with a violation of subsection (a) or (b) of this section,  
62 or any person permitted to operate an aircraft as described under subsection (c) of this section,  
63 is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute  
64 a defense against any charge of violating subsection (a), (b) or (c) of this section.

65 (i) For purposes of this section, the term "controlled substance" shall have the meaning  
66 ascribed to it in chapter sixty-a of this code.

67 (j) When any person is convicted of violating any provision of this section, the clerk of the  
68 court in which such conviction is had shall, within seventy-two hours after receipt thereof, transmit  
69 a true copy thereof to the federal aviation administration.

**§29-2A-14. Federal license required for operation of aircraft.**

1 No person shall operate or cause or authorize to be operated any aircraft within this state  
2 unless such aircraft has an appropriate effective certificate, permit or license issued by the United  
3 States, if such certificate, permit or license is required by the United States; nor shall any person  
4 engage in aeronautics as an airman in this state unless he or she has an appropriate effective  
5 airman certificate, permit, rating or license issued by the United States authorizing him or her to

6 engage in the particular class of aeronautics in which he or she is engaged, if such certificate,  
7 permit, rating or license is required by the United States.

8         Where a certificate, permit, rating or license is required for an airman by the United States,  
9 it shall be kept in his or her personal possession when he or she is operating within this state and  
10 shall be presented for inspection upon the demand of any law enforcement officer, or any official,  
11 manager or person in charge of any airport upon which the airman shall land, or upon the  
12 reasonable request of any other person. Where a certificate, permit or license is required by the  
13 United States for an aircraft, it shall be carried in the aircraft at all times while the aircraft is  
14 operating in the state, shall be conspicuously posted in the aircraft where it may readily be seen  
15 by passengers or inspectors, and shall be presented for inspection upon the demand of any law  
16 enforcement officer, or any official, manager or person in charge of any airport upon which the  
17 aircraft shall land, or upon the reasonable request of any person.

**§29-2A-20. Enforcement of aeronautics laws.**

1         It shall be the duty of all law enforcement officers, to enforce and assist in the enforcement  
2 of this article and all other laws of this state relating to aeronautics. Law enforcement officers are  
3 authorized to inspect and examine at reasonable hours any aircraft, the credentials of any airman  
4 or other person engaged in aeronautics required by the laws of this state or of the United States  
5 to have in his or her possession credentials evidencing his or her authority or permission to  
6 engage in aeronautics, any premises and the buildings and other structures thereon, where  
7 airports, air navigation facilities or other aeronautical activities are operated or conducted.

**§29-2A-9. State airways.**

1         [Repealed.]

**§29-2A-17. Investigations; hearings; power to subpoena witnesses; self-incrimination.**

1         [Repealed.]

**§29-2A-18. Disposition of fees.**

1         [Repealed.]

**§29-2A-19. Federal-state joint hearings; reciprocal services; accident reporting.**

1 [Repealed.]

**§29-2A-21. Use of state and municipal facilities and services.**

1 [Repealed.]

**§29-2A-22. Commission orders, notices and opportunity for hearings.**

1 [Repealed.]

**§29-2A-23. Judicial review of commission's action.**

1 [Repealed.]

**§29-2A-24. Penalties for violation of provisions of article.**

1 [Repealed.]

**§29-2A-25. Exchange of information as to violations.**

1 [Repealed.]

**§29-2A-26. Severability.**

1 [Repealed.]

**§29-2A-27. Repeal.**

1 [Repealed.]

**§29-2A-28. Short title.**

1 [Repealed.]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Kevin Spawth*  
.....  
Chairman, House Committee

*E. S. T.*  
.....  
Member Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Steve Harris*  
.....  
Clerk of the House of Delegates

*Joe Levin*  
.....  
Clerk of the Senate

*Les Young*  
.....  
Speaker of the House of Delegates

*Walter B. Carmichael*  
.....  
President of the Senate

FILED  
2019 MAR 26 P 1:41  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within *is* approved this the *26th*  
day of *March* ..... 2019.

*James Owens*  
.....  
Governor

PRESENTED TO THE GOVERNOR

1953

Time 12:58 pm