

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 364

SENATOR MAYNARD, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on January 22, 2020]

1 A BILL to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended,
2 relating generally to authorizing certain agencies of the Department of Transportation to
3 promulgate legislative rules; authorizing the rules as filed and as modified by the
4 Legislative Rule-Making Review Committee and as amended by the Legislature;
5 authorizing the Division of Highways to promulgate a legislative rule relating to use of state
6 road rights-of-way and adjacent areas; authorizing the Division of Highways to promulgate
7 a legislative rule relating to transportation of hazardous wastes upon the roads and
8 highways; authorizing the Division of Highways to promulgate a legislative rule relating to
9 small wireless facilities on Division of Highways rights-of-way; authorizing the Division of
10 Motor Vehicles to promulgate a legislative rule relating to a safety and treatment program;
11 and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to
12 State Vehicle Title, Registration, and Relicensing Project of 2018.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO
PROMULGATE LEGISLATIVE RULES.**

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on July 29, 2019, authorized under the
2 authority of §17-2A-8(24) of this code, modified by the Division of Highways to meet the objections
3 of the Legislative Rule-Making Review Committee and refiled in the State Register on January 8,
4 2020, relating to the Division of Highways (use of state road rights-of-way and adjacent areas,
5 157 CSR 06), is authorized with the following amendments:

6 On page 11, by striking out subsection 3.8 and inserting in lieu thereof a new subsection
7 3.8 to read as follows:

8 3.8. Utility Installations. All publicly and privately owned utilities, including but not limited
9 to, electric, communication, gas, oil, petroleum products, chemical, water, steam, sewage,

10 drainage, and similar facilities that are to be accommodated, adjusted or relocated within state
11 highway right-of-way, shall be in accordance with the Division's interpretive rule promulgated
12 under section 10 of this rule.

13 On page 11, by striking out paragraph 3.8.d.3. and inserting in lieu thereof a new
14 paragraph 3.8.d.3. to read as follows:

15 3.8.d.3. "Notice requesting removal or relocation and utility liability. In accordance with
16 the interpretive rule promulgated under section 10 of this rule, the Division shall provide notice to
17 affected utilities when relocations of existing facilities are required for highway projects. If the
18 utility fails to comply with the notice as provided in W.Va. Code §17-4-17b(d), the utility is liable
19 for all costs, fees, penalties, or other charges incurred by the Division as a result of the utility's
20 failure to timely relocate, unless a written extension is granted by the Division".;

21 On page 12, by striking out all of subdivision 3.8.e.

22 And,

23 On page 36, by adding a new section 10. to read as follows:

24 **§157-6-10. Promulgation of interpretive rule and legislative rule on fees.**

25 10.1. The Division shall promulgate an interpretive rule in accordance with W. Va. Code
26 §29A-3-1 *et seq.* setting forth the requirements for accommodating utilities on highway right-of-
27 way and the adjustment and relocation of utility facilities on highway projects. The interpretive rule
28 may not contain any type of fee.

29 10.2. The Division shall promulgate any fees levied on a utility or telecommunications
30 provider by legislative rule in accordance with W. Va. Code §29A-3-1 *et seq.*

31 (b) The legislative rule filed in the State Register on July 26, 2019, authorized under the
32 authority of §22-18-7(a) of this code, relating to the Division of Highways (transportation of
33 hazardous wastes upon the roads and highways, 157 CSR 07), is authorized.

34 (c) The legislative rule filed in the State Register on July 29, 2019, authorized under the
35 authority of §31H-2-3 of this code, modified by the Division of Highways to meet the objections of

36 the Legislative Rule-Making Review Committee and refiled in the State Register on January 8,
37 2020, relating to the Division of Highways (small wireless facilities on Division of Highways rights-
38 of-way, 157 CSR 13), is authorized.

§64-8-2. Division of Motor Vehicles.

1 (a) The legislative rule filed in the State Register on August 19, 2019, authorized under
2 the authority of §17C-5A-3 of this code, modified by the Division of Motor Vehicles to meet the
3 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
4 November 6, 2019, relating to the Division of Motor Vehicles (safety and treatment program, 91
5 CSR 15), is authorized.

6 (b) The legislative rule filed in the State Register on July 29, 2019, authorized under the
7 authority of §17A-3-25 of this code, relating to the Division of Motor Vehicles (State Vehicle Title,
8 Registration, and Relicensing Project of 2018, 91 CSR 24), is authorized.