

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 3377

By Delegates Mallow, DeVault, and T. Clark

[Originating in the Committee on Energy and Public

Works; Reported on March 26, 2025]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
2 designated §17-2E-1, §17-2E -2, §17-2E -3; §17-2E -4, and §17-2E -5; by adding thereto a
3 new section designated §17-4-1; and by adding thereto a new article designated §36C-1-
4 1, §36C-1-2, §36C-1-3, §36C-1-4, §36C-1-5, §36C-1-6, §36C-1-7, and §36C-1-8, all
5 relating to the maintenance of roads and infrastructure; establishing a county and
6 municipal orphan road program; permitting counties and municipalities to acquire or
7 maintaining roads and bridges which are not maintained by any governmental entity for
8 that purpose; providing for the procedure required to find and designate such roads or
9 bridges; establishing public notification and transparency; authorizing funding; providing
10 for an online map of state roads; creating Infrastructure Only Common Ownership
11 Associations; providing for uniformity of application; determining the construction and
12 validity of Infrastructure Only Common Ownership Associations; providing for the filing of
13 required plats and plans; and providing for the management, termination, and scope of
14 Infrastructure Only Common Ownership Associations.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2F. COUNTY AND MUNICIPAL ORPHAN ROAD AND BRIDGE

ACQUISITION

PROGRAM

§17-2F-1. Establishment of a county and municipal orphan road and bridge acquisition and maintenance program in all counties; criteria for designation as an orphan road or bridge.

1 Authority is hereby granted to the West Virginia Division of Highways to establish a
2 program by which counties and municipalities may acquire and/or maintain roads and bridges
3 which meet the following three criteria:

4 (a) Are in existence as of January 1, 2025;

5 (b) are roads or bridges which the public has a right to use; and

(c) are roads or bridges not maintained by any governmental agency. These roads and bridges are herein designated as orphan roads and bridges.

§17-2F-2. Development of program.

The West Virginia Division of Highways shall develop a county and municipal orphan roads and bridges identification program which shall include all counties and municipalities. At the discretion of the Commissioner of the Division of Highways, a report may be provided to counties and municipalities identifying roads and bridges within their jurisdiction that are not on the state road system, or the Commissioner may publish an online Geospatial Information Systems map allowing counties to identify which roads or bridges within their jurisdiction are not on the state road system. The Commissioner may further implement procedures to assist counties and municipalities in coordinating with the West Virginia Local Technical Assistance Program ("LTAP") for technical assistance related to any roads or bridges that a county or municipality may want to acquire.

§17-2F-3. Duties of commission or council with respect to orphan roads and bridges; criteria for inclusion; acquisition of rights-of-way.

(a) After reviewing the reports made or information provided under the provisions of §17-2F-2, the county commission or city council may determine whether a specific road or bridge should be added to the county or city maintenance system. They shall consider the following criteria in reaching their determination:

(1) the availability of resources for maintaining the road or bridge;

(2) the number of persons served by the road or bridge;

(3) the current and anticipated use of the road or bridge;

(4) the condition of the road or bridge;

(5) the availability and suitability of alternate routes;

(6) the suitability for maintenance equipment to access and maintain the road or bridge;

(7) the existing design and layout of the road or bridge; and

(8) the number of roads and bridges accepted into the maintenance system.

(b) In order for a road or bridge to qualify for inclusion into the county or city system, all necessary rights-of-way shall be either dedicated or donated to the relevant entity.

(c) In the event that all property owners do not agree to dedicate or donate the necessary rights-of-way, then any individual, group, business or governmental entity can donate to the county or city a sum sufficient to cover the expense of acquiring the right-of-way that has not been dedicated or donated. The Commissioner of the Division of Highways may also use any moneys donated to the state road fund specifically for the purposes of aiding a county or municipality acquiring a right-of-way which has not been dedicated or donated.

§17-2F-4. Public notification and transparency.

(a) Prior to undertaking any acquisition of an orphan road or bridge, counties and municipalities shall provide public notification of proposed improvements, which shall include:

(1) Posting a notice at municipal offices;

(2) Utilizing local media; or

(3) Engaging in community meetings.

(b) Participating counties and municipalities shall maintain transparency by publishing project details, timelines, and funding sources on their official websites.

§17-2F-5. Funding.

Participating counties and municipalities may fund acquisition, repair and maintenance of orphan roads and bridges by:

(1) Existing funds authorized for infrastructure development;

(2) State and federal grants dedicated to infrastructure development; and

(3) Partnerships with private entities.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-1. Online map of state roads.

1 By July 1, 2026, the Division of Highways shall create and publish an online Geospatial
2 Information Systems map with address search functionality displaying all roads in the control of
3 and under the responsibility of the Division. This shall be updated on at least an annual basis.

CHAPTER 36C. INFRASTRUCTURE ONLY COMMON OWNERSHIP

ASSOCIATIONS.

ARTICLE 1. INFRASTRUCTURE ONLY COMMON OWNERSHIP ASSOCIATIONS.

§36C-1-1. Uniformity of application and construction.

1 Any Infrastructure Only Common Ownership Associations created by this Chapter are, in
2 the absence of any other law to the contrary, governed by the provisions of Chapter 36B of this
3 Code, the Uniform Common Interest Ownership Act.

§36C-1-2. Creation.

1 A group of homeowners may create an Infrastructure Only Common Ownership
2 Association by recording a declaration executed in the same manner as a deed. The declaration
3 must be recorded in every county in which any portion of the common interest community is
4 located and must be indexed in the grantee's index in the name of the common interest community
5 and the association and in the grantor's index in the name of each person executing the
6 declaration.

§36C-1-3. Construction and validity of declaration and bylaws.

- 1 (a) All provisions of the declaration and bylaws are severable.
- 2 (b) The rule against perpetuities does not apply to defeat any provision of the declaration,
3 bylaws, rules or regulations adopted pursuant to the provisions of this Chapter.
- 4 (c) In the event of a conflict between the provisions of the declaration and the bylaws, the
5 declaration prevails except to the extent the declaration is inconsistent with this chapter.
- 6 (d) A declaration or the bylaws may not change or alter a restrictive covenant in a deed or
7 other instrument to any real estate that is or that becomes subject to the provisions of this chapter.

The restrictive covenants that are in effect at the time real estate is purchased that is or that becomes subject to the provisions of this chapter may not be changed or altered as to the purchaser of that real estate or as to any assign, heir or beneficiary of the original purchaser unless that original purchaser, assign, heir or beneficiary agrees in writing to a change of a restrictive covenant. The provisions of this section have no application to restrictive covenants which contain provisions authorizing amendment when those provisions for amendment are duly followed.

§36C-1-4. Contents of declaration.

(a) The declaration must contain:

(1) The names of the common interest community and the association and a statement that the common interest community is an Infrastructure Only Common Ownership Association;

(2) The name of every county in which any part of the common interest community is situated;

(3) A legally sufficient description of the real estate included in the common interest community;

(4) A statement of infrastructure the common interest community seeks to administer or develop.

(5) Plats and plans of the relevant property, as specified in §36C-1-5.

(b) The declaration may contain any other matters the declarant considers appropriate.

§36C-1-5. Plats and plans.

(a) Plats and plans are a part of the declaration and are required for all Infrastructure Only Common Ownership Associations. Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

18 (1) The name and a survey or general schematic map of the entire Infrastructure Only
19 Common Ownership Association;

20 (2) The location and dimensions of all real estate not subject to development rights as
21 further specified in §36B-1-1, et. seq. of this Code, or subject only to the development right to
22 withdraw and the location and dimensions of all existing improvements within that real estate;

23 (3) A legally sufficient description of any real estate subject to development rights, labeled
24 to identify the rights applicable to each parcel;

25 (4) The extent of any encroachments by or upon any portion of the common interest
26 community;

27 (5) To the extent feasible, a legally sufficient description of all infrastructure planned to be
28 administered by the Infrastructure Only Common Ownership Association and serving or burdening
29 any portion of the common interest community;

30 (6) The distance between noncontiguous parcels of real estate comprising the common
31 interest community;

32 (c) A plat may also show the intended location and dimensions of any contemplated
33 improvement to be constructed anywhere within the common interest community. Any
34 contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE
35 BUILT."

36 (d) Upon exercising any development right, the declarant shall record either new plats and
37 plans necessary to conform to the requirements of subsections (a), (b) and (d) or new certifications
38 of plats and plans previously recorded if those plats and plans otherwise conform to the
39 requirements of those subsections.

40 (e) Any certification of a plat or plan required by this Chapter must be made by an
41 independent (registered) surveyor, architect or engineer.

§36C-1-6. Management of an Infrastructure Only Common Ownership Association.

Management of an Infrastructure Only Common Ownership Association shall be conducted in accordance with the relevant provisions of Chapter 36B of this Code, the Uniform Common Interest Ownership Act.

§36C-1-7. Termination of an Infrastructure Only Common Ownership Association.

(a) Except in the case of a taking of all the units by eminent domain, an Infrastructure Only Common Ownership Association may be terminated only by agreement of the owners of properties to which at least eighty percent of the votes in the association are allocated, or any larger percentage the bylaws may specify. The bylaws may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract for the sale of real estate in an Infrastructure Only Common Ownership Associations, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b) of this section. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear.

(d) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

§36C-1-8. Scope of an Infrastructure Only Common Ownership Associations.

1 An Infrastructure Only Common Ownership Association created by this Chapter may
2 administer the following items only:

3 (a) Common roadways serving the properties constituting the Association.

4 (b) Access to regulated public utilities; for purposes of this section, this includes all
5 electricity, gas, and other utilities, even when these are not obtained from a private company, but
6 are obtained or produced by cooperative action of the Infrastructure Only Common Ownership
7 Association.

8 (c) Telecommunications infrastructure, including all cable, satellite and broadband
9 infrastructure.

10 (d) Water control and drainage, including storm sewers; and

11 (e) Sanitary Sewers.