

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 4040

By Delegate Mallow

[Originating in the Committee on Energy and Public
Works; Reported on February 10, 2026]

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

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2E. COUNTY AND MUNICIPAL ORPHAN ROAD AND BRIDGE

ACQUISITION PROGRAM

**§17-2E-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, 2026;
- 5 (b) are roads or bridges which the public has a right to use; and
- 6 (c) are roads or bridges not maintained by any governmental agency. These roads and

7 bridges are herein designated as orphan roads and bridges.

§17-2F-2. Development of program.

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

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

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

- 5 (1) the availability of resources for maintaining the road or bridge;
- 6 (2) the number of persons served by the road or bridge;
- 7 (3) the current and anticipated use of the road or bridge;
- 8 (4) the condition of the road or bridge;
- 9 (5) the availability and suitability of alternate routes;
- 10 (6) the suitability for maintenance equipment to access and maintain the road or bridge;
- 11 (7) the existing design and layout of the road or bridge; and
- 12 (8) the number of roads and bridges accepted into the maintenance system.

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

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

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

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

3 (1) Posting a notice at municipal offices;

4 (2) Utilizing local media; or

5 (3) Engaging in community meetings.

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

§17-2F-5. Funding.

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

3 (1) Existing funds authorized for infrastructure development;

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

5 (3) Partnerships with private entities.

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

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

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

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

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

25 (d) Upon exercising any development right, the declarant shall record either new plats and
26 plans necessary to conform to the requirements of subsections (a), (b) and (d) of this section or
27 new certifications of plats and plans previously recorded if those plats and plans otherwise
28 conform to the requirements of those subsections.

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

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

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

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

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

5 of the units are restricted exclusively to nonresidential uses.

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

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

19 (d) Following termination of the common interest community, the proceeds of any sale of
20 real estate, together with the assets of the association, are held by the association as trustee for
21 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.

NOTE: The purpose of this bill is to facilitate the improvement of non-state owned roads by municipalities while providing legal safeguards against litigation, ensuring that local governments can enhance infrastructure and ensure public safety effectively.

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