

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 711

By Senator Morris

[Introduced February 2, 2026; referred
to the Committee on Transportation and
Infrastructure; and then to the Committee on the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §17-4-56, relating to highway drainage; prohibiting the discharge of
3 concentrated highway runoff onto private property; defining "lawful outfalls"; authorizing
4 the Division of Highways to convey drainage beyond the right-of-way; permitting limited off
5 right-of-way maintenance activities; and establishing standards of reasonableness and
6 liability limitations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-56. Highway drainage; protection of private property.

1 (a) Legislative findings. — The Legislature finds that state highway construction and
2 maintenance may alter natural drainage patterns; that the artificial collection and concentration of
3 surface water may cause flooding, erosion, or damage to private property if not properly conveyed;
4 and that it is in the public interest to ensure that highway drainage systems are designed,
5 maintained, and operated in a manner that protects adjoining and downstream properties while
6 preserving the efficient operation of the state road system.

7 (b) Prohibition on harmful concentrated discharge. — The Division of Highways shall not
8 construct, maintain or operate any ditch, culvert, pipe, channel, or other highway drainage facility
9 that collects or concentrates surface water and discharges such water onto private property in a
10 manner that causes material flooding, erosion, or property damage, unless such discharge is
11 conveyed to a lawful outfall.

12 (c) Lawful outfall defined. — For purposes of this section, "lawful outfall" includes:

13 (1) A natural watercourse, including a stream, creek, river, or similar channel;

14 (2) A pond, lake, or other permanent water body;

15 (3) A public stormwater or drainage system;

16 (4) A properly designed detention or retention facility; or

17 (5) Any other location that does not result in material damage to private property.

18 (d) Authority to convey drainage beyond the right-of-way. — Notwithstanding any other
19 provision of law, the Division of Highways is expressly authorized to extend or modify drainage
20 facilities beyond the highway right-of-way; to acquire drainage easements or temporary
21 construction easements by purchase, agreement, or eminent domain as necessary to convey
22 highway runoff to a lawful outfall; and to construct, maintain, and repair drainage improvements
23 outside the right-of-way when reasonably necessary to comply with this section.

24 (e) Limited authority for off-right-of-way maintenance and sediment removal. — The
25 Division of Highways may, without acquiring a permanent easement, enter private property
26 beyond the right-of-way solely for the purpose of removing sediment, debris, or obstructions from
27 a culvert, ditch, or drainage structure that is part of, connected to, or affected by a state highway
28 drainage system, or for performing minor grading or clearing necessary to restore the intended
29 hydraulic function of such structure, provided that the work represents the least costly and most
30 reasonable method to alleviate drainage impacts caused by the state highway, the entry is
31 temporary in nature, the property is restored to substantially its prior condition, and the work does
32 not increase runoff impacts to other properties.

33 (f) Limitation of liability; reasonableness standard. — Nothing in this section may be
34 construed to require the Division of Highways to prevent all flooding under extraordinary weather
35 events; to impose liability for damages caused solely by natural drainage conditions not altered by
36 highway facilities; or to create a cause of action where the division has acted in substantial
37 compliance with this section and generally accepted engineering standards.

38 (g) Applicability. — This section applies to new highway construction, reconstruction or
39 major rehabilitation projects, and existing drainage facilities where the division determines that
40 highway infrastructure has materially altered drainage patterns and caused recurring property
41 damage.

NOTE: The purpose of this bill is to ensure that highway drainage systems are designed, maintained, and operated in a manner that protects adjoining and downstream properties while preserving the efficient operation of the state road system.

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