

1 **Senate Bill No. 368**

2 (By Senator Hall)

3 _____

4 [Introduced January 20, 2012; referred to the Committee on

5 Transportation and Infrastructure; and then to the Committee on

6 the Judiciary.]

7 _____

8

9

10

11 A BILL to amend and reenact §17-4-47 of the Code of West Virginia,

12 1931, as amended, relating to granting access to unused

13 property of the Division of Highways to real property owners

14 within a one-mile radius of the land.

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

16 That §17-4-47 of the Code of West Virginia, 1931, as amended,

17 be amended and reenacted to read as follows:

18 **ARTICLE 4. STATE ROAD SYSTEM.**

19 **§17-4-47. Access from commercial, etc., property and subdivisions**

20 **to highways -- Purposes of regulation; right of**

21 **access; provisions inapplicable to controlled-access**

22 **facilities; removal of unauthorized access; bond for**

23 **access.**

1 (a) Reciprocal access between state highways and real property
2 used or to be used for commercial, industrial or mercantile
3 purposes and reciprocal access between state highways and real
4 property that is subdivided into lots is a matter of public concern
5 and shall be regulated by the Commissioner of Highways to achieve
6 the following purposes:

7 (1) To provide for maximum safety of persons traveling upon,
8 entering or leaving state highways;

9 (2) To provide for efficient and rapid movement of traffic
10 upon state highways;

11 (3) To permit proper maintenance, repair and drainage of state
12 highways; and

13 (4) To facilitate appropriate public use of state highways.

14 (b) Except where the right of access has been limited by or
15 pursuant to law, every owner or occupant of real property abutting
16 upon any existing state highway has a right of reasonable means of
17 ingress to and egress from such state highway consistent with those
18 policies expressed in subsection (a) of this section and any
19 regulations issued by the commissioner under section forty-eight of
20 this article.

21 (c) Except where the right of access has been limited by or
22 pursuant to law, every owner or occupant of real property abutting
23 upon or an owner of real property within a one-mile radius of any
24 existing unused state highway land may apply to the commissioner

1 for the right to make a noncommercial and nonpolitical use of the
2 unused land. Appropriate use of the land may include, but is not
3 limited to:

4 (1) Beatification of land by mowing and bailing of the hay,
5 ditch or stream maintenance and litter removal;

6 (2) Residential gardening; and

7 (3) Other limited use of the property approved by the
8 commissioner.

9 ~~(c)~~ (d) If the construction, relocation or reconstruction of
10 any state highway, to be paid for, in whole or in part, with
11 federal or state road funds, results in the abutment of real
12 property as defined in subsection (a) of this section on the state
13 highway that did not previously abut on it, no rights of direct
14 access shall accrue because of such abutment. However, the
15 commissioner may authorize or limit access from an abutting
16 property if the property is compatible with the policies stated in
17 subsection (a) of this section and any regulations issued by the
18 commissioner as authorized by section forty-eight of this article.

19 ~~(d)~~ (e) The policies expressed in this section are applicable
20 to state highways generally and shall in no way limit the authority
21 of the Commissioner of Highways to establish controlled-access
22 facilities under sections thirty-nine through forty-six, inclusive,
23 of this article.

24 ~~(e)~~ (f) Any unauthorized access to a state highway may be

1 removed, blocked, barricaded or closed in any manner considered
2 necessary by the commissioner to protect the safety of the public
3 and enforce the policies of this section and sections forty-eight,
4 forty-nine and fifty of this article.

5 ~~(f)~~ (g) As a condition of granting access to a state highway,
6 the commissioner may require the owners of real property developed
7 or to be developed to provide a bond in an amount the commissioner
8 determines necessary to compensate the division for improvements to
9 highway facilities required as a result of the development. This
10 bond shall be held a maximum of ten years. ~~Provided, that~~ No bond
11 shall be required for any residential development consisting of one
12 hundred homes or less.

NOTE: The purpose of this bill is to grant access to unused property of the Department of Highways to real property owners within a one-mile radius of the land for purposes of beautification and other limited uses approved by the commissioner.

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