

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2941

BY DELEGATES GEARHEART, STORCH, HAMRICK, CRISS,

HANSHAW, WESTFALL, PAYNTER, COOPER, MOORE,

AMBLER AND WHITE

[Originating in the Committee on the Judiciary;

March 22, 2017]

1 A BILL to amend and reenact §17-2A-7 and §17-2A-8 of the Code of West Virginia, 1931, as
2 amended, all relating to the Division of Highways utilization of the Attorney General for
3 legal services; requiring the Commissioner of the Division of Highways to utilize the
4 Attorney General for all legal assistance and services; and providing for exceptions.

Be it enacted by the Legislature of West Virginia:

1 That §17-2A-7 and §17-2A-8 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, all to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-7. Legal assistance.

1 ~~Notwithstanding any law to the contrary, the commissioner:~~

2 ~~(1) Shall select and employ a competent legal staff adequate for the ordinary legal services~~
3 ~~required by him or her and shall provide therefor such quarters, equipment, facilities, services and~~
4 ~~stenographic and other personnel as may be necessary;~~

5 ~~(2) May call upon the Attorney General and the prosecuting attorneys of the several~~
6 ~~counties, within their respective jurisdictions, for legal assistance and services as provided by law;~~

7 ~~(3) May employ such additional legal counsel as he or she deems necessary upon a~~
8 ~~reasonable fee basis to perform legal services in acquiring, by right of eminent domain or~~
9 ~~otherwise, property, or an estate, right or interest therein.~~

10 (a) Except as provided in subsection (b) of this section, the commissioner shall utilize the
11 Attorney General for all legal assistance and services as provided by law.

12 (b) The commissioner may:

13 (1) Employ a competent legal staff adequate for the ordinary legal services required by
14 him or her and shall provide therefor such quarters, equipment, facilities, services and
15 stenographic and other personnel as may be necessary: *Provided*, That for purposes of this
16 subdivision, “ordinary legal services” does not include the retention or hiring of outside legal
17 counsel; and

18 (2) Employ such additional legal counsel as he or she deems necessary upon a
19 reasonable fee basis to perform legal services in acquiring, by right of eminent domain or
20 otherwise, property, or an estate, right or interest therein.

§17-2A-8. Powers, duties and responsibilities of commissioner.

1 In addition to all other duties, powers and responsibilities given and assigned to the
2 commissioner in this chapter, the commissioner may:

3 (1) Exercise general supervision over the state road program and the construction,
4 reconstruction, repair and maintenance of state roads and highways;

5 (2) Determine the various methods of road construction best adapted to the various
6 sections and areas of the state and establish standards for the construction and maintenance of
7 roads and highways in the various sections and areas of the state;

8 (3) Conduct investigations and experiments, hold hearings and public meetings and attend
9 and participate in meetings and conferences within and without the state for purposes of acquiring
10 information, making findings and determining courses of action and procedure relative to
11 advancement and improvement of the state road and highway system;

12 (4) Enter private lands to make inspections and surveys for road and highway purposes;

13 (5) Acquire, in name of the department, by lease, grant, right of eminent domain or other
14 lawful means all lands and interests and rights in lands necessary and required for roads, rights-
15 of-way, cuts, fills, drains, storage for equipment and materials and road construction and
16 maintenance in general;

17 (6) Procure photostatic copies of any or all public records on file at the State Capitol of
18 Virginia which may be considered necessary or proper in ascertaining the location and legal status
19 of public road rights-of-way located or established in what is now the State of West Virginia, which
20 when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of
21 the courts of this state;

22 (7) Plan for and hold annually a school of good roads, of not less than three or more than
23 six days' duration, for instruction of his or her employees, which is held in conjunction with West
24 Virginia University and may be held at the university or at any other suitable place in the state;

25 (8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of
26 other states and of the United States relating to and regulating the use of roads and highways
27 with reference to weights and types of vehicles, registration of vehicles and licensing of operators,
28 military and emergency movements of personnel and supplies and all other matters of interstate
29 or national interest;

30 (9) Classify and reclassify, locate and relocate, expressway, trunkline, feeder and state
31 local service roads and designate by number the routes within the state road system;

32 (10) Create, extend or establish, upon petition of any interested party or parties or on the
33 commissioner's own initiative, any new road or highway found necessary and proper;

34 (11) Exercise jurisdiction, control, supervision and authority over local roads, outside the
35 state road system, to the extent determined by him or her to be expedient and practicable;

36 (12) Discontinue, vacate and close any road or highway, or any part of any road or
37 highway, the continuance and maintenance of which are found unnecessary and improper, upon
38 petition and hearing or upon investigation initiated by the commissioner;

39 (13) Close any state road while under construction or repair and provide a temporary road
40 during the time of the construction or repair;

41 (14) Adjust damages occasioned by construction, reconstruction or repair of any state
42 road or the establishment of any temporary road;

43 (15) Establish and maintain a uniform system of road signs and markers;

44 (16) Fix standard widths for road rights-of-way, bridges and approaches to bridges and fix
45 and determine grades and elevations therefor;

46 (17) Test and standardize materials used in road construction and maintenance, either by
47 governmental testing and standardization activities or through contract by private agencies;

48 (18) Allocate the cost of retaining walls and drainage projects, for the protection of a state
49 road or its right-of-way, to the cost of construction, reconstruction, improvement or maintenance;

50 (19) Acquire, establish, construct, maintain and operate, in the name of the department,
51 roadside recreational areas along and adjacent to state roads and highways;

52 (20) Exercise general supervision over the construction and maintenance of airports and
53 landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which
54 the commissioner is a member, and make a study and general plan of a statewide system of
55 airports and landing fields;

56 (21) Provide traffic engineering services to municipalities of the state upon request of the
57 governing body of any municipality and upon terms that are agreeably arranged;

58 (22) Institute complaints before the Public Service Commission or any other appropriate
59 governmental agency relating to freight rates, car service and movement of road materials and
60 equipment;

61 (23) Invoke any appropriate legal or equitable remedies, subject to section seven of this
62 article, to enforce his or her orders, to compel compliance with requirements of law and to protect
63 and preserve the state road and highway system or any part of the system;

64 (24) Make and promulgate rules for the government and conduct of personnel, for the
65 orderly and efficient administration and supervision of the state road program and for the effective
66 and expeditious performance and discharge of the duties and responsibilities placed upon him or
67 her by law;

68 (25) Delegate powers and duties to his or her appointees and employees who shall act by
69 and under his or her direction and be responsible to him or her for their acts;

70 (26) Designate and define any construction and maintenance districts within the state road
71 system that is found expedient and practicable;

72 (27) Contract for the construction, improvement and maintenance of the roads;

73 (28) Comply with provisions of present and future federal aid statutes and regulations,
74 including execution of contracts or agreements with and cooperation in programs of the United
75 States government and any proper department, bureau or agency of the United States
76 government relating to plans, surveys, construction, reconstruction, improvement and
77 maintenance of state roads and highways;

78 (29) Prepare budget estimates and requests;

79 (30) Establish a system of accounting covering and including all fiscal and financial
80 matters of the department;

81 (31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials
82 Revolving Fund and an Equipment Revolving Fund;

83 (32) Enter into contracts and agreements with and cooperate in programs of counties,
84 municipalities and other governmental agencies and subdivisions of the state relating to plans,
85 surveys, construction, reconstruction, improvement, maintenance and supervision of highways,
86 roads, streets and other travel ways when and to the extent determined by the department to be
87 expedient and practical;

88 (33) Report, as provided by law, to the Governor and the Legislature;

89 (34) Purchase materials, supplies and equipment required for the state road program and
90 system;

91 (35) Dispose of all obsolete and unusable and surplus supplies and materials which
92 cannot be used advantageously and beneficially by the department in the state road program by
93 transfer of the supplies and materials to other governmental agencies and institutions by
94 exchange, trade or sale of the supplies and materials;

95 (36) Investigate road conditions, official conduct of department personnel and fiscal and
96 financial affairs of the department and hold hearings and make findings thereon or on any other
97 matters within the jurisdiction of the department;

98 (37) Establish road policies and administrative practices;

99 (38) Fix and revise from time to time tolls for transit over highway projects constructed by
100 the Division of Highways after May 1, 1999, that have been authorized by the provisions of section
101 five-b, article seventeen-a of this chapter;

102 (39) Take actions necessary to alleviate any conditions as the Governor may declare to
103 constitute an emergency, whether or not the emergency condition affects areas normally under
104 the jurisdiction of the ~~department~~ Division of Highways; and

105 (40) Provide family restrooms at all rest areas along interstate highways in this state, all
106 to be constructed in accordance with federal law.

NOTE: The purpose of this bill is to make clear that the DOH shall utilize the Attorney General for legal assistance and services.

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