

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 562

BY SENATOR BLAIR

[Originating in the Committee on the Judiciary;

reported on March 27, 2017]

1 A Bill to amend and reenact §17-10-17 of the Code of West Virginia, 1931, as amended, relating
2 to civil actions for damages brought against county commissions and municipalities by
3 persons injured by reason of a slip, trip, fall or similar injury resulting from defect, disrepair,
4 maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway
5 or public walkway.

Be it enacted by the Legislature of West Virginia:

1 That §17-10-17 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

**ARTICLE 10. COUNTY COMMISSIONS; MUNICIPALITIES; GENERAL AUTHORITY
AND DUTIES AS TO ROADS, ETC.**

**§17-10-17. Action for damages occasioned by ~~defective~~ defect in, disrepair, maintenance
of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway, public
walkway, etc.**

1 ~~Any person who sustains an injury to his person or property by reason of any road or~~
2 ~~bridge under the control of the county court or any road, bridge, street, alley or sidewalk in any~~
3 ~~incorporated city, town or village being out of repair due to the negligence of the county court,~~
4 ~~incorporated city, town or village may recover all damages sustained by him by reason of such~~
5 ~~injury in an action against the county court, city, town or village in which such road, bridge, street,~~
6 ~~alley or sidewalk may be, except that such city, town or village shall not be subject to such action~~
7 ~~unless it is required by charter, general law or ordinance to keep the road, bridge, street, alley or~~
8 ~~sidewalk therein, at the place where such injury is sustained, in repair. If it is not so required, the~~
9 ~~action and remedy shall be against the county court. When judgment is obtained against the~~
10 ~~county court, such court shall at the time of the laying of the next annual levy, levy upon the~~
11 ~~taxable property of the district in which such injury is sustained a sufficient sum to pay such~~
12 ~~judgment with interest and costs, and the costs of collecting the same, and when it is obtained~~

13 ~~against the city, town or village the proper municipal authorities thereof shall lay such levies at~~
14 ~~the time of levying the next annual levy on the property subject to taxation in such city, town or~~
15 ~~village. In case of a failure by either so to do, or to pay the judgment as required by law, the circuit~~
16 ~~court of the county for which such county court acts or in which such city, town or village or the~~
17 ~~major portion of the territory thereof is located shall compel the laying of such levy, or the payment~~
18 ~~of such judgment, or both, by mandamus.~~

19 (a) Notwithstanding any other provision of the code to the contrary, beginning on July 1,
20 2017, all claims or actions against a county commission or municipality seeking damages for
21 injury to person or property for a slip, trip, fall or similar injury as a result of any defect in, disrepair
22 or maintenance of, or failure to maintain or repair, any road, bridge, street, sidewalk, alleyway,
23 stairway or other public walkway or area used for travel, ingress or egress, that is owned,
24 controlled or maintained by a county commission or municipality are subject to the requirements
25 of this section.

26 (b) Any person who sustains an injury to his or her person or property by reason of a slip,
27 trip, fall or similar injury as a result of any defect in, disrepair or maintenance of, or failure to
28 maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway
29 or area used for travel, ingress or egress, that is owned, controlled or maintained by a county
30 commission or municipality may recover civil damages sustained by him or her by reason of the
31 injury in an action against the county commission or municipality, subject to the following
32 limitations:

33 (1) The injury directly results from and occurs while employees of the county commission
34 or municipality are physically present at the site performing construction, maintenance, repair or
35 cleaning, but excluding inspection of work being performed, or materials being used, by others,
36 where and when the injury is sustained; or

37 (2) The injury arises from a defect in, the disrepair or maintenance of, or the failure to
38 maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway

39 or area used for travel, ingress or egress, due to the gross negligence of the county commission
40 or municipality.

41 (c) With regard to any action arising under this section, the county commission or
42 municipality owes no duty of care to protect against, and is not liable for, dangers that are open
43 and obvious, reasonably apparent or as well known to the person injured as they are to the county
44 commission or municipality. In its application of the open and obvious doctrine, a court as a matter
45 of law shall appropriately apply the doctrine considering the nature and severity, or lack thereof,
46 of violations of any statute, state rule or municipal ordinance relating to a cause of action.

47 (d) This section does not diminish or limit the protections afforded to county commissions
48 and municipalities by other provisions of this code, including the immunities granted by article
49 twelve-a, chapter twenty-nine of this code.