

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3016

BY DELEGATE BUTLER AND PORTERFIELD

(BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION)

[Introduced February 12, 2019; Referred
to the Committee on Government Organization then
Finance.]

1 A BILL to repeal §29-2A-9, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-11b, §29-2A-11c, §29-
 2 2A-11d, §29-2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-14, §29-2A-17, §29-2A-
 3 18, §29-2A-19, §29-2A-20, §29-2A-21, §29-2A-22, §29-2A-23, §29-2A-24, §29-2A-25,
 4 §29-2A-26, §29-2A-27, and §29-2A-28 of the Code of West Virginia, 1931, as amended;
 5 and to amend and reenact §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-
 6 6, §29-2A-7, and §29-2A-8 of said code, all relating to the State Aeronautics Commission;
 7 removing antiquated and inoperable provisions and sections; modifying and deleting
 8 definitions; continuing the State Aeronautics Commission; modifying and updating
 9 membership requirements, powers, and duties of the commission; setting forth quorum
 10 and meeting requirements; providing for the organization and operation of the
 11 commission; modifying provisions related to the director of the commission; updating
 12 provisions related to funding and federal aid; and continuing general powers related to
 13 planning, establishing, constructing, maintaining, and operating of airports.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-1. Definitions.

1 As used in the statutes of West Virginia, unless the context otherwise requires:
 2 (a) "Aeronautics" means the art and science of flight, including, but not limited to,
 3 transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft
 4 power plants and accessories, including the repair, packing, and maintenance of parachutes; ~~and~~
 5 the design, establishment, construction, extension, operation, improvement, repair, or
 6 maintenance of airports or other air navigation facilities; and education about aeronautics.
 7 (b) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for
 8 navigation of or flight in the air.
 9 (c) ~~"Airmen" means any individual who engages, as the person in command, or as pilot,~~
 10 ~~mechanic or member of the crew, in the navigation of the aircraft while under way and any~~

11 ~~individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft~~
12 ~~engines, propellers or appliances and any individual who serves in the capacity of aircraft~~
13 ~~dispatcher or air-traffic control tower operator. It does not include any individual employed outside~~
14 ~~the United States, or any individual employed by a manufacturer of aircraft, aircraft engines,~~
15 ~~propellers or appliances to perform duties as inspector or mechanic in connection therewith, or~~
16 ~~any individual performing inspection or mechanical duties in connection with aircraft owned or~~
17 ~~operated by him or her~~

18 (d) "Air navigation" or "navigation" means the operation or navigation of aircraft in the air
19 space over this state, or upon any airport within this state.

20 (e) "Air navigation facility" means any facility other than one owned or controlled by the
21 federal government used in, available for use in, or designed for use in aid of air navigation,
22 including airports, and any structures, mechanisms, lights, beacons, markers, communications
23 system or other instrumentalities or devices used or useful as an aid or constituting an advantage
24 or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient
25 operation or maintenance of an airport, and any combination of any or all of such facilities-

26 (f) "Airport" means any area of land or water which is used, or intended for use, for the landing
27 and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport
28 buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities
29 located thereon.

30 (g) ~~"Airport hazard" means any structure, object of natural growth or use of land which~~
31 ~~obstructs the air space required for the flight of aircraft in landing or taking off at any airport or is~~
32 ~~otherwise hazardous to such landing or taking off~~

33 (h) "Commission" means the West Virginia State Aeronautics Commission.

34 (i) "Director" means the director of ~~aeronautics of this state~~ the Commission.

35 (j) "Municipality" means any county, city, town, village, or other political subdivision of this
36 state. "Municipal" means pertaining to a municipality as herein defined.

37 ~~(k)~~ "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft
38 in the airspace over this state or upon the ground within this state.

39 ~~(l)~~ "Person" means any individual, firm, ~~co~~partnership partnership, corporation, company,
40 association, joint stock association, or body politic and includes any trustee, receiver, assignee,
41 or other similar representative thereof.

42 ~~(m)~~ The singular of any of the above defined terms shall include the plural and plural the
43 singular.

**§29-2A-2. Creation and membership Short title; continuation of commission; membership
and compensation; quorum.**

1 ~~There is hereby created an aeronautics commission, to be known as "The West Virginia~~
2 ~~State Aeronautics Commission", to consist~~ (a) This article may be cited as the "State Aeronautics
3 Commission Act".

4 (b) The West Virginia State Aeronautics Commission is hereby continued. The current
5 members shall retain their seats until the expiration of their terms and may be reappointed. The
6 commission consists of five members ~~to be~~ appointed by the Governor, by and with the advice
7 and consent of the Senate. One ~~of such members~~ member shall be the Secretary of
8 Transportation ex officio, whose term ~~as such member~~ shall continue for the period that he or she
9 holds the office of Secretary of Transportation. The other four members of the commission ~~shall~~
10 ~~be~~ are initially appointed by the Governor, ~~each to serve a term beginning the July 1, 1947~~ one to
11 serve for a term of one year, one to serve for a term of two years, one to serve for a term of three
12 years, and one to serve for a term of four years. The successors of the members ~~(other than the~~
13 ~~Secretary of Transportation)~~ initially appointed as provided herein shall be appointed for terms of
14 four years each in the same manner as the members originally appointed under this ~~article~~
15 section, except that any person appointed to fill a vacancy occurring prior to the expiration of the
16 term for which his or her predecessor was appointed shall be appointed only for the remainder of
17 such term. Each member shall serve until the appointment and qualification of his or her

18 successor. No more than three members of the commission shall be members of the same
19 political party. All members of the commission shall be citizens and residents of this state. The
20 members of the commission who ~~shall be~~ are appointed by the Governor as provided by this
21 section shall be selected with due regard to their fitness by reason of their aeronautical, legal,
22 administrative, or management knowledge. ~~and practical experience in the field of aeronautics~~ In
23 making such appointments, the Governor shall, so far as may be possible and practicable, select
24 the several members from different geographical sections of the state.

25 (c) No member ~~shall~~ may receive any salary for his or her services, but each shall be
26 reimbursed for actual and necessary expenses incurred by such member in the performance of
27 his or her duties in accordance with state travel rules.

28 (d) Three members are a quorum, and a quorum is necessary to conduct business.
29 Members may participate in any meeting by phone.

§29-2A-3. Powers and duties of commission.

1 ~~The commission shall assume, carry on and succeed to all the duties, rights, powers,~~
2 ~~obligations and liabilities heretofore belonging to, exercised by, or assumed by the state board of~~
3 ~~aeronautics, pursuant to statutory authority heretofore existing and as changed or modified by the~~
4 ~~provisions of this article. It~~ The commission may enter into any contracts necessary to the
5 execution of the powers granted to it by this article. It is empowered and directed to encourage,
6 foster, and assist in the development of aeronautics in this state and to encourage the
7 establishment of airports and air navigation facilities. It shall cooperate with and assist the federal
8 government, the municipalities of this state, and other persons in the development of aeronautics
9 and shall act to coordinate the aeronautical activities of these bodies and persons. Municipalities
10 are authorized to cooperate with the commission in the development of aeronautics and
11 aeronautics facilities in this state. The commission is hereby given the power and authority to
12 make such rules as it may deem rules, policies, and guidelines necessary and advisable for the
13 public safety, governing the designing, laying out, locating, building, equipping and operating of

14 all airports and the conduct of all other phases of aeronautics to effectuate the requirements of
 15 this article.

16 (1) The commission shall keep on file with the Secretary of State, and at the principal office
 17 of the commission, a copy of ~~all~~ its rules and orders having general effect for public inspection. It
 18 shall provide for the publication and general distribution of all its orders, rules, and ~~procedures~~
 19 ~~having general effect~~ other information of public interest. Copies of any such orders, ~~or~~ rules, and
 20 other information shall be ~~delivered~~ made available electronically and provided to any person
 21 interested, free of charge, upon request. The publication and distribution of any such order or rule
 22 ~~as provided herein in~~ proposed for legislative approval in accordance with the provisions of §29A-
 23 3-1 et seq. of this code shall be sufficient notice to the public of the provisions, requirements, and
 24 effect thereof.

25 ~~Each rule of the commission shall be promulgated as a legislative rule pursuant to the~~
 26 ~~provisions of chapter twenty-nine-a of this code~~

27 (2) Except where otherwise prohibited, the commission is authorized to permit the state
 28 Board of Investments to invest, as provided by this code, any funds received by the commission
 29 pursuant to the provisions of this code.

§29-2A-4. Organization of commission; meetings; reports; offices.

1 (a) The commission shall make, and may from time to time amend, rules for the
 2 administration of the powers granted to it by this article. ~~as are not inconsistent therewith and as~~
 3 ~~the commission may deem expedient~~ The commission shall organize by electing from among its
 4 members a ~~chairman~~ chairperson who shall serve as such for a period of two years. ~~Such~~
 5 ~~chairman shall have the power~~ The chairperson is authorized to sign documents, execute
 6 contracts, and otherwise act for and in the name of the commission in all matters within the lawful
 7 powers of the commission and ~~fully~~ authorized by a majority of its members.

8 (b) The commission shall determine the number, date, and place of its regular meetings,
 9 but at least one ~~such~~ meeting shall be held annually at the commission's established offices in

10 the city of Charleston. Whenever the convenience of the public or of interested persons may be
 11 promoted, or delay or expense may be prevented, the commission may hold meetings ~~hearings~~
 12 ~~or proceedings~~ at any other place designated by it.

13 (c) The commission shall report in writing to the Governor on or before August 31 of each
 14 year. The report shall contain a summary of the commission's proceedings during the preceding
 15 fiscal year, a detailed and itemized statement of all revenue received, and all expenditures made
 16 by or on behalf of the commission, such other information ~~as it may deem~~ which may be necessary
 17 or useful, and any additional information which may be requested by the Governor. The fiscal
 18 year of the commission shall conform to the fiscal year of the state.

19 (d) An office shall be established and maintained by the commission in the city of
 20 Charleston. ~~In addition, the commission may establish and maintain such other offices within the~~
 21 ~~state as it may deem necessary and expedient~~

**§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and
 duties; administrative and other assistants staff.**

1 (a) A director of aeronautics shall be appointed by the commission, with the advice and
 2 consent of the Secretary of Transportation, who shall serve for an indefinite term at the pleasure
 3 of the commission. The director shall be appointed with due regard to his or her fitness ~~by~~
 4 ~~aeronautical education and by knowledge of and recent practical experience in aeronautics, for~~
 5 ~~the efficient dispatch of the powers and duties vested in and imposed upon him by this article~~ as
 6 an administrator. The director shall devote his or her time to the duties of his or her office as
 7 required and prescribed by this article and ~~shall~~ may not have any pecuniary interest in, or any
 8 stock in, or bonds of, any civil aeronautical enterprise. ~~The director shall receive such~~
 9 ~~compensation as the commission may determine. which said~~ The Secretary of Transportation, in
 10 consultation with the commission, shall determine the director's compensation. The
 11 compensation shall ~~however~~ conform in general to the compensation received by persons
 12 occupying positions of similar importance and responsibility with other agencies of this state. The

13 director's compensation shall be appropriated from general revenue and may not be paid, in
 14 whole or in part, from grant funds received by the commission. The director shall be reimbursed
 15 for all traveling and other expenses incurred by him or her in the discharge of his or her official
 16 duties in accordance with state travel rules. The director shall be the executive officer of the
 17 commission and under its supervision shall administer the provisions of this article and the rules
 18 and orders established thereunder and all ~~other~~ applicable laws of the state ~~relative to~~
 19 ~~aeronautics.~~ The director shall attend, but not vote, at all meetings of the commission. The director
 20 ~~shall act as~~ serves as the secretary of the commission and ~~shall be~~ is in charge of its offices and
 21 responsible to the commission for the preparation of reports and the collection and dissemination
 22 of data and other public information relating to aeronautics. At the direction of the commission,
 23 the director ~~shall, together with the chairman of the commission,~~ is authorized to execute all
 24 contracts entered into by the commission which are legally authorized and for which funds are
 25 provided in any state or federal appropriations act.

26 (b) The commission may, by written order filed in its office, delegate to the director any of
 27 the powers or duties vested or imposed upon it by this article. ~~Such~~ Any delegated powers and
 28 duties may be exercised by ~~such~~ the director in the name of the commission. The commission
 29 may also employ ~~such~~ any necessary administrative, engineering, technical, and clerical
 30 ~~assistance as may be required~~ staff. ~~The director and such other assistants may, under the~~
 31 ~~supervision of the commission, insofar as is reasonably possible, make available the engineering~~
 32 ~~and other technical services of the commission, without charge to any municipality, and with or~~
 33 ~~without charge to any other person desiring them, in connection with the construction,~~
 34 ~~maintenance or operation, or proposed construction, maintenance or operation of any airport~~

§29-2A-6. State financial assistance for county, municipal, and regional airports.

1 The commission, out of any appropriation made to it by the Legislature or out of any funds
 2 at its disposal, may make funds available by grant or otherwise to counties, municipalities, and
 3 regional airport authorities, created under the provisions of chapter eight of this code, for the

4 planning, acquisition, construction, improvement, maintenance, or operation of airports owned or
 5 operated or to be owned or operated by such counties, municipalities, or regional airport
 6 authorities. Acceptance of any moneys so made available to any such county, municipality, or
 7 regional airport authority, shall constitute consent by the recipient that a reasonable use of such
 8 the airport may be made, upon request of the commission, by the United States government, the
 9 state, or any of their respective agencies, including the State Aeronautics Commission and the
 10 National Guard of West Virginia for state purposes related or incidental to aeronautics. Such
 11 ~~financial assistance may be furnished in connection with federal or other financial aid for the same~~
 12 ~~purpose~~

§29-2A-7. Federal aid.

1 ~~(a) The commission is authorized to cooperate with the government of the United States,~~
 2 ~~and any agency or department thereof, in the planning, acquisition, construction, improvement,~~
 3 ~~maintenance and operation of airports and other air navigation facilities in this state. and The~~
 4 ~~commission is authorized to accept federal aid either outright or by way of matching ~~the same~~~~
 5 ~~funds, in whole or in part, as may be required, ~~and when~~ by the federal government. When~~
 6 ~~matching funds ~~for matching~~ are available to the commission, ~~and to comply~~ they may be used in~~
 7 ~~compliance with the provisions of the laws and regulations of the United States ~~and any~~~~
 8 ~~regulations made thereunder for the expenditure of federal moneys ~~upon such~~ for airports and~~
 9 other air navigation facilities.

10 (b) The commission is authorized to accept and receive ~~and receipt~~ for federal moneys and
 11 other moneys, either public or private, for and ~~in~~ on behalf of this state, or any municipality thereof,
 12 for the planning, acquisition, construction, improvement, maintenance, and operation of airports
 13 and other air navigation facilities. ~~whether such~~ The funds may be expended regardless of
 14 whether the work is to be done by the state or ~~by such a~~ a municipality, or jointly. If the funds are
 15 ~~aided by grants of aid~~ from the United States, they shall be expended upon such terms and
 16 conditions as are or may be prescribed by the laws of the United States and any rules or

17 regulations made thereunder. ~~and it~~ The commission is hereby designated as the agency of the
18 state, and is authorized to and may act as agent of any municipality of this state upon the request
19 of such municipality, in accepting and receiving ~~and receipting for such~~ moneys ~~in~~ on its behalf
20 for airports or other air navigation facility purposes, and in contracting for the planning, acquisition,
21 construction, improvement, maintenance, or operation of airports or other air navigation facilities,
22 financed, either in whole or in part, by federal moneys. ~~and any such~~ A municipality is authorized
23 to and may enter into an agreement with the commission prescribing the terms and conditions of
24 such agency in accordance with federal laws, rules, and regulations and with this article. ~~Such~~ All
25 moneys ~~as are~~ paid ~~over~~ by the United States government shall be retained by the state or paid
26 ~~over~~ to said municipalities under such terms and conditions as may be imposed by the United
27 States government in making such grants.

28 (c) All contracts for the planning, acquisition, construction, improvement, maintenance, and
29 operation of airports, or other air navigation facilities made by the commission, either as the agent
30 of the state or as the agent of any municipality therein, shall be made pursuant to the laws of this
31 state governing the making of like contracts: *Provided*, That where the planning, acquisition,
32 construction, improvement, maintenance, and operation of any airport or other air navigation
33 facility is financed wholly or partially with federal moneys, the commission, as agent of the state
34 or of any municipality thereof, may let contracts in the manner prescribed by the federal
35 authorities, acting under the laws of the United States, and any rules or regulations made
36 thereunder, notwithstanding any other state law to the contrary.

37 (d) All moneys accepted for disbursement by the commission pursuant to this section shall
38 be deposited in the State Treasury, and, unless otherwise prescribed by the authority from which
39 the money is received, kept in separate funds, designated according to the purposes for which
40 the moneys were made available, and held by the state in trust for such purposes. All such
41 moneys are hereby appropriated for the purposes for which ~~the same~~ they were made available
42 and shall be expended in accordance with federal laws and regulations and ~~with the provisions of~~

43 this article. The commission is authorized, whether acting for this state or as the agent of any
 44 municipality therein, when requested by the United States government or any agency or
 45 department thereof, or when requested by the state or municipality for which the money has been
 46 made available, to disburse such moneys for the designated purposes, but this shall not preclude
 47 any other authorized method of disbursement.

48 (e) The state or any municipality therein is authorized to cooperate with the government of
 49 the United States, and any agency or department thereof, in the acquisition, construction,
 50 improvement, maintenance, and operation of airports and other air navigation facilities in this state
 51 and is authorized to accept federal aid, either by way of outright grant or by matching the ~~same~~
 52 funds, in whole or in part, as may be required, and to comply with the provisions of the laws of
 53 the United States and any rules or regulations made thereunder for the expenditure of federal
 54 moneys upon such airports and other navigation facilities.

§29-2A-8. Establishment and operation of state airports.

1 (a) The commission is authorized on behalf of and in the name of the state, out of
 2 appropriations and other moneys made available for such purposes, to plan, establish, construct,
 3 maintain, and operate airports and air navigation facilities within the state. For ~~such~~ these
 4 purposes the commission may, by purchase, gift, devise, lease, condemnation, or otherwise,
 5 acquire such property, real or personal, as is necessary to permit safe and efficient operation of
 6 the airports and air navigation facilities. In like manner, the commission may acquire existing
 7 airports and air navigation facilities: *Provided, however,* That it shall not acquire or take over any
 8 airport or air navigation facility owned or controlled by a municipality of this or any other state
 9 without the consent of ~~such~~ the municipality. The commission may by sale, lease, or otherwise,
 10 dispose of any such property, airport, air navigation facility, or portion thereof or interest therein.
 11 ~~Such~~ Any disposal by lease shall be made pursuant to the terms of ~~§8-11-6 of the Code of West~~
 12 ~~Virginia~~ §8-28-7 of this code. ~~Such~~ Any disposal by sale or otherwise shall be in accordance with
 13 the laws of this state governing the disposition of other property of the state, except that in the

14 case of disposal to any municipality or state government or the United States for aeronautical
 15 purposes incident thereto the sale or other disposal may be effected in such manner and upon
 16 such terms as the commission ~~may deem~~ determines are in the best interest of the state.

17 (b) Nothing contained in this article shall be construed to limit any right, power, or authority
 18 of the state or a municipality to regulate airport hazards by zoning.

19 (c) The commission may exercise any powers granted by this section jointly with any
 20 municipalities or agencies of the state government, with other states or their municipalities, or with
 21 the United States.

22 (d) In the condemnation of property authorized by this section, the commission shall
 23 proceed in the name of the state in the manner provided by chapter 54 of this code.

§29-2A-9. State airways.

1 [Repealed.]

§29-2A-10. Public purpose of activities.

1 [Repealed.]

**§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or
 drugs; criminal penalties.**

1 [Repealed.]

**§29-2A-11a. Implied consent to test; administration at direction of law-enforcement officer;
 designation of type of test; definition of law-enforcement officer.**

1 [Repealed.]

§29-2A-11b. Preliminary analysis of breath to determine alcoholic content of blood.

1 [Repealed.]

**§29-2A-11c. How blood test administered; additional test at option of person tested; use
 of test results; certain immunity from liability incident to administering test.**

1 [Repealed.]

§29-2A-11d. Interpretation and use of chemical test.

1 [Repealed.]

§29-2A-11e. Right to demand test.

1 [Repealed.]

§29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.

1 [Repealed.]

§29-2A-12. Operation of aircraft at low altitude or in careless and reckless manner; penalty.

1 [Repealed.]

§29-2A-13. Unauthorized taking or operation of aircraft; penalty.

1 [Repealed.]

§29-2A-14. Federal license required for operation of aircraft.

1 [Repealed.]

§29-2A-17. Investigations; hearings; power to subpoena witnesses; self-incrimination.

1 [Repealed.]

§29-2A-18. Disposition of fees.

1 [Repealed.]

§29-2A-19. Federal-state joint hearings; reciprocal services; accident reporting.

1 [Repealed.]

§29-2A-20. Enforcement of aeronautics laws.

1 [Repealed.]

§29-2A-21. Use of state and municipal facilities and services.

1 [Repealed.]

§29-2A-22. Commission orders, notices and opportunity for hearings.

1 [Repealed.]

§29-2A-23. Judicial review of commission's action.

1 [Repealed.]

§29-2A-24. Penalties for violation of provisions of article.

1 [Repealed.]

§29-2A-25. Exchange of information as to violations.

1 [Repealed.]

§29-2A-26. Severability.

1 [Repealed.]

§29-2A-27. Repeal.

1 [Repealed.]

§29-2A-28. Short title.

1 [Repealed.]

NOTE: The purpose of this bill is to conform the statute to the actual duties of the State Aeronautics Commission. The commission administers grant programs to encourage and support needed capital improvements to the state's public airports. Airports meeting the criteria for Federal Aviation Administration Airport Improvement Program funds also qualify for funding from the state program. Currently, airports that meet the commission's criteria can qualify for up to half of the local share required to match FAA funds. The grant program is supported by the state tax on aircraft fuel and general revenue funds.

The commission is not a law enforcement or regulatory agency, therefore, those sections which grant the commission law enforcement or regulatory authority are being repealed. The new language continues the commission and authorizes grant administration.

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