

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 734**

BY SENATOR CLEMENTS

[Introduced February 7, 2020; referred  
to the Committee on Transportation and  
Infrastructure]



1 A BILL to amend and reenact §17-2A-17 of the Code of West Virginia, 1931, as amended, relating  
2 to clarifying the powers and duties of the Division of Highways in acquiring property for  
3 state road purposes to include depth as well as width; and updating antiquated language.

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

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§17-2A-17. Acquisition of property for state road purposes; “state road purposes” defined.**

1 In addition to all other powers given and assigned to the commissioner in this chapter, the  
2 commissioner may acquire, either temporarily or permanently, in the name of the ~~state road~~  
3 ~~commission~~ Division of Highways all real or personal property, public or private, or any interests  
4 or rights therein, including any easement, riparian right, or right of access, deemed by the  
5 commissioner to be necessary for present or presently foreseeable future state road purposes by  
6 gift, lease, grant, bequest, devise, agreement, purchase, exchange, right of eminent domain, or  
7 other lawful means. ~~Such real~~ Real property may be acquired in fee simple or in any lesser estate  
8 or interest therein, except in the case of a public road, only the right-of-way ~~only~~ shall be acquired.  
9 Acquisition of such personal property shall be subject to the provisions of §17-2A-13 and §17-2A-  
10 15 of this code. The acquisition of ~~any and~~ all such real and personal property is hereby declared  
11 to be a cost of highway construction. Nothing in this section ~~shall be deemed to restrict or~~  
12 ~~relinquish~~ restricts or relinquishes any right the state or any agency thereof now or hereafter  
13 possesses or may exercise by virtue of the police power or other lawful authority.

14 As used in this article, “state road purposes” shall include provision for, but shall not be  
15 limited to, the following:

16 (a) Constructing, establishing, laying out, widening, enlarging, extending, straightening,  
17 reconstructing, relocating, grading, altering, improving, and maintaining state roads;

18 (b) Rights-of-way for state roads, including those needed for such roads within  
19 municipalities, such rights-of-way to be ~~as wide~~ to such width and depth as deemed necessary  
20 for the project by the commissioner and shall include all material therein;

21 (c) Adequate drainage of state roads;

22 (d) Controlled-access facilities, as defined in §17-4-39 of this code, including existing and  
23 vested rights of access, air, view and light, whether privately or publicly owned, and local service  
24 roads to controlled-access facilities;

25 (e) Broadcasting stations, weighing stations, shops, equipment sheds, office buildings,  
26 storage buildings and yards, snow fences, road maintenance, or construction sites;

27 (f) Road-building material storage sites, quarry sites, gravel pits, sites for the acquisition  
28 or manufacture of road-building materials including borrow pits, stockpile sites, waste-material  
29 sites and access roads to any such sites or places;

30 (g) The culture and support of trees which benefit any state road by aiding in the  
31 maintenance and preservation of the road;

32 (h) Landscape and roadside development, and maintenance thereof, within any state road  
33 right-of-way, and the acquisition and maintenance of lands and interests in lands for the  
34 restoration, preservation, and enhancement of places of scenic beauty, and other objects of  
35 attraction or scenic value adjacent to or near any state road, and the acquisition, development,  
36 and maintenance of publicly owned and controlled rest and recreation areas and sanitary and  
37 other facilities reasonably necessary for the accommodation of the traveling public, within,  
38 adjacent to, or near the right-of-way of any road within the state road system;

39 (i) Development and maintenance of parking places, auto camps, camp sites, roadside  
40 parks, historic roadside markers and sites, forest or timbered areas, or other places of attraction  
41 and scenic value which are adjacent to or near any state road and which in the judgment of the  
42 commissioner are necessary for the convenience of the public and will contribute to the general  
43 welfare and pleasure of the motoring public or road users;

44 (j) Maintenance of an unobstructed view of any portion of any state road in order to provide  
45 for the safety of the traveling public;

46 (k) Erection and maintenance of markers, warning signs and traffic signals;

47 (l) Construction and maintenance on state roads of sidewalks and highway illumination;

48 (m) Elimination or prevention of hazardous or undesirable points of entry to state roads  
49 from adjacent property;

50 (n) Acquisition of property, or any interest or right therein, for the purpose of exchanging  
51 it for other property, or any interest or right therein, which the ~~commission~~ Division of Highways  
52 is authorized to acquire by the other provisions of this section: *Provided*, That such substitute  
53 property, or any interest or right therein, may be acquired by the commissioner by condemnation  
54 only if the following conditions are satisfied: (1) ~~Money~~ Monetary compensation would be  
55 substantially inadequate for the property, or interest or right therein, which the commissioner is  
56 authorized to acquire by the other provisions of this section; and (2) the ~~commission~~ Division of  
57 Highways has entered into a written agreement to exchange the substitute property, or the right  
58 or interest therein, for the property, or right or interest therein, which is needed for state road  
59 purposes, regardless of whether the person who has agreed to accept the exchange has the right  
60 to condemn the substitute property, or the right or interest therein; and

61 (o) Acquisition of real property, not needed ~~as such~~ for a state road, for the purpose of  
62 moving and relocating thereon a building or other structure or appurtenance which is situated on  
63 a lot or tract of land all or a portion of which is needed for a state road and which, after relocation,  
64 will be suitable for the purpose for which it was used prior to its being relocated: *Provided*,  
65 ~~however~~, That such additional real property may be acquired by the commissioner by  
66 condemnation only if the following conditions are satisfied: (1) The building or other structure or  
67 appurtenance is of substantial value; (2) the real property on which it is to be relocated is not  
68 substantially improved and is adjacent to or near the location from which it is to be removed; (3)  
69 the owner of the real property needed for the state road has entered into a written agreement with  
70 the ~~commission~~ Division of Highways to accept in exchange the additional property with the  
71 relocated building or structure or appurtenance thereon; (4) substantial savings in expenditure of  
72 state road funds will result from condemning the additional property and relocating the building or

73 structure or appurtenance rather than condemning the lot or tract, or the portion thereof, on which  
74 the building or other structure or appurtenance may be located; and (5) the real property with the  
75 relocated building or structure or appurtenance thereon will be relatively equal in value to the real  
76 property needed for the state road.

NOTE: The purpose of this bill is to clarify the powers and duties of the Division of Highways in acquiring property for state road purposes including depth and to update antiquated language. A prior Legislature created a hybrid real estate ownership because DOH is not allowed to acquire property in fee. This bill clarifies that the DOH takes what is necessary for road construction, repair and maintenance. Historically, DOH has cut through mountains and used the cut material for fill. The bill states that the Commissioner takes a sufficient area in width and depth to construct a road. This should allow DOH to continue using fill material taken from one area of the project and use it in another. This does not include coal, oil or gas deposits.

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