

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 819

SENATORS CLINE AND PLYMALE, *original sponsor*

[Originating in the Committee on Transportation and

Infrastructure; reported on February 20, 2020]

1 A BILL to amend and reenact §17C-17A-2, §17C-17A-3, §17C-17A-5, and §17C-17A-12 of the
2 Code of West Virginia, 1931, as amended, all relating to coal resource transportation
3 roads; defining certain terms; expanding coal resource transportation road system;
4 updating reporting requirements for Division of Highways and Public Service Commission;
5 updating maximum distance for special crossing permits; updating process for designation
6 and decertification of coal resource transportation roads; renaming Coal Resource
7 Transportation Designation Committee as Coal Resource Transportation Advisory
8 Committee and redefining authority; and correcting technical errors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-2. Definitions.

1 For purposes of this article:

2 ~~(a)~~ A “coal resource transportation road” means a road designated by the ~~Department of~~
3 ~~Transportation~~ Division of Highways as safe and sufficient to allow vehicles hauling coal to carry
4 a greater gross and axle weight of up to 120,000 pounds, with a five percent variance.

5 ~~(b)~~ “Coal” or “coal by-products” means the mineral in raw or clean state and includes
6 synthetic fuel manufactured or produced for which credit is allowable under 26 U.S.C. §29 of the
7 Internal Revenue Code (1996).

8 ~~(c)~~ “Commission” means the Public Service Commission of West Virginia.

9 “Commissioner” means the Commissioner of the Division of Highways.

10 ~~(d)~~ “Division” means the Division of Highways within the Department of Transportation.

11 ~~(e)~~ “Mining operation” means any activity related to extraction of coal regulated under the
12 provisions of this code.

13 ~~(f)~~ “Operator” means the person driving a commercial motor vehicle transporting coal on
14 any public highway of this state.

15 (g) "Person" means any individual, partnership, firm, society, association, trust,
16 corporation, other business entity or any agency, unit, or instrumentality of federal, state, or local
17 government.

18 (h) "Shipper" means the person who loads coal or causes coal to be loaded into any
19 commercial motor vehicle that will operate on any public highway in this state.

20 (i) "Receiver" means the person who accepts for unloading coal from any vehicle that has
21 operated on any public highway in this state.

22 (j) "Vehicle owner" means the person who as owner of a commercial motor vehicle
23 employs, contracts, or otherwise directs a driver to operate that vehicle on a public highway of
24 this state for the purpose of transporting coal.

**§17C-17A-3. Authority of the Division of Highways and Public Service Commission
generally.**

1 (a) The Division of Highways shall establish all legal vehicle weight limits for all public
2 highways including roads within the coal resource transportation road system. Public highways
3 shall be designated as coal resource transportation roads by the Commissioner of the Division of
4 Highways pursuant to this article. Only state-maintained roads and public highways found in the
5 following areas: Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Wayne and
6 Wyoming counties; in Braxton county, Braxton county route 19/29 from Mine 5 haulroad to
7 intersection of county route 36/1, county route 36/1 to intersection of county route 36 and county
8 route 36 to the Webster County line (Webster County route 9); in Ohio County, county route 1
9 from the intersection of county route 7 to intersection of Riley Delaplaine Road; in Greenbrier
10 County, routes west of Sam Black Church and southwest to the Summers County line; in Clay
11 County, routes 4 and 16; in Nicholas County, routes 1/11, 16, 19, 19/2, 19/40, 20, 39, 41, 55 and
12 82; in Webster County, routes 9, 9/1, 9/2, 20, 32 and 82; and all state-maintained roads and public
13 highways found in Washington, Malden, Loudon and Cabin Creek districts, Kanawha County are
14 eligible to qualify as part of the coal resource transportation road system. The Once designated,

15 ~~the~~ division shall post signs on roads informing the public of the designation and shall also list a
16 toll-free telephone line for public reporting of poor driving or law violations by special permit
17 operators. The division shall provide periodic reports to the ~~commercial motor vehicle weight and~~
18 ~~safety enforcement advisory committee as established in section two, article one a, chapter~~
19 ~~twenty four a of this code~~ Legislative Oversight Commission on Department of Transportation
20 Accountability, established in §4-14-3 of this code, relating to the study of coal resource
21 transportation roads. The ~~periodic~~ reports shall include the following at a minimum: (1) The
22 balance in the Coal Resource Transportation Road Fund and the expenditures therefrom by
23 county and project; (2) a list of any roads or road segments that are being designated or
24 decertified as part of the system; and (3) any information requested by the Legislative Oversight
25 Commission on Department of Transportation Accountability. The Public Service Commission
26 shall also file quarterly reports to the Legislative Oversight Commission on Department of
27 Transportation Accountability which shall include the following at a minimum: (1) Citations Notices
28 of violation issued for violations of this chapter; and (2) disposition of the ~~violations~~ notices of
29 violation. (3) road conditions and maintenance; and (4) the amount of undue road damage
30 ~~attributable to coal resource transportation road system permit use~~ The division and the Public
31 Service Commission shall also provide their reports to the Commercial Motor Vehicle Weight and
32 Safety Enforcement Advisory Committee.

33 (b) The Public Service Commission shall administer the coal resource transportation road
34 permitting program and otherwise enforce the provisions of this article. The commission shall
35 establish requirements for vehicle operators holding coal resource transportation road permits
36 pursuant to §17C-17A-5 of this code consistent with federal statutory and regulatory
37 requirements.

38 (1) The commission may, during normal business hours, conduct inspections of all
39 trucking-related records of shippers, vehicle operators, vehicle owners, and receivers engaged in
40 the transportation of coal. Copies of records shall be provided to commission employees upon

41 request. This provision may not be construed to authorize the commission to reveal trade secrets
42 or other confidential financial information of those persons inspected; however, the commission
43 may use any weight measurement records as evidence of a violation of this article.

44 (2) The commission shall establish and maintain a toll-free telephone line for public
45 reporting of poor driving or law violations by special permit operators. In addition, the commission
46 shall require all vehicles operating under a permit issued pursuant to the provisions of this article
47 to clearly display on the vehicle the toll-free telephone number.

48 ~~(3) The commission shall implement a study of commercial vehicle safety-related issues,~~
49 ~~including using higher education institutions and other research organizations. The commission~~
50 ~~shall provide periodic reports to the commercial motor vehicle weight and safety enforcement~~
51 ~~advisory committee as established in section two, article one-a, chapter twenty-four-a of this code~~
52 ~~relating to the study of motor vehicle weight and safety enforcement~~

53 (4) (3) The commission shall establish procedures to use electronic real-time reporting of
54 coal vehicle weights on coal resource transportation roads by shippers and receivers. The
55 commission may require daily certified reports from shippers or receivers if electronic reporting
56 methods are not used. The commission may authorize alternative measures of reporting that
57 require same-day reporting of weight measurements by shippers and receivers.

58 ~~(5)~~ (4) The commission shall impose and collect from shippers of coal on the coal resource
59 transportation road system through the use of the special permit, issued pursuant to §17C-17A-5
60 of this code, for the privilege of loading coal in excess of 88,000 pounds for transport on a coal
61 resource transportation road. The fee shall be assessed in the amount of 5 cents per ton of coal
62 hauled over the road. Revenue from the fees shall be deposited in the coal resource transportation
63 fund created in said section.

64 (c) Notwithstanding the provisions of §29A-1-3 of this code, the commission and the
65 division shall each propose legislative rules for promulgation in accordance with the provisions of

66 §29A-3-1 *et seq.* of this code to carry out their duties and responsibilities pursuant to the
67 provisions of this article.

68 (d) Notwithstanding any provisions of this code to the contrary, the division may propose
69 rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code
70 which would provide a process for approval by the commissioner of the division of a special
71 crossing permit and renewals thereof. Special crossing permits authorized by this subsection
72 would authorize the holder of the permit to operate or move a vehicle or combination of vehicles
73 which exceed the maximum weight allowance specified in this chapter or are otherwise not in
74 conformity with the provisions of this chapter on limited sections of public highways under specific
75 circumstances specified in the permit: *Provided*, That no special crossing permit may allow the
76 operation or movement of any vehicle or combination of vehicles on a public highway for more
77 than ~~one-half of a~~ one mile: *Provided, however*, That no special crossing permit may allow the
78 operation or movement of any vehicle or combination of vehicles on a public highway if the
79 Commissioner of the Division of Highways determines there is an existing alternate off-road route
80 available. Each special crossing permit shall contain the specific section or mileage of the public
81 highway where operation is authorized. Special crossing permits may not exceed a three-year
82 period and may be renewed upon approval by the Commissioner of the Division of Highways as
83 specified in legislative rule. The Commissioner of the Division may provide for fees for the
84 processing of applications for special crossing permits. As a condition of approval of a special
85 crossing permit, an applicant shall agree to pay for all actual expenditures incurred by the
86 ~~Department of Transportation~~ Division of Highways for the upgrading or repair of the public
87 highway, including traffic control devices, for which the applicant seeks the special crossing
88 permit. In addition, all holders of special crossing permits shall pay for the restoration of the public
89 highway to its original condition after the permit has expired. ~~The initial rule filed by the Division~~
90 ~~pursuant to this subsection shall be filed as an emergency rule~~

§17C-17A-5. Operation of coal trucks under special permits; weight limitations; payment of permit fees.

1 (a) Any vehicle, when transporting coal over certain public highways, designated as coal
2 resource transportation roads by the commissioner ~~of the department of highways,~~ may be
3 operated at the weights as set forth in this section in excess of the maximum gross weight
4 prescribed in §17C-17-9 of this code and any other maximum weight limitations on any public
5 highway by paying the corresponding special permit fee and otherwise complying with the
6 provisions of this article.

7 (b) Special permits shall be issued subject to the following requirements:

8 (1) A single unit truck having one steering axle and two axles in tandem shall be limited to
9 a maximum gross weight of 80,000 pounds with a tolerance of five percent and pay a special
10 permit fee annually of \$100;

11 (2) A single unit truck having one steering axle and three axles in tridem arrangement shall
12 be limited to a maximum gross weight of 90,000 pounds with a tolerance of five percent and pay
13 a special permit fee annually of ~~one hundred \$60~~ \$160;

14 (3) A tractor-semitrailer combination with five axles shall be limited to a maximum gross
15 weight of 110,000 ~~thousand~~ pounds with a tolerance of five percent and pay a special permit fee
16 annually of \$300;

17 (4) A tractor-semitrailer combination with six or more axles shall be limited to a maximum
18 gross weight of 120,000 pounds with a tolerance of five percent and pay a special permit fee
19 annually of \$500.

20 (c) The axle loads set forth in subsection (b) of this section may in no event exceed the
21 maximum axle load allowable based upon the minimum axle spacings as determined by the
22 Division of Highways in accordance with generally accepted industry standards and bridge
23 loading analysis.

24 (d) In order to qualify for issuance of a special permit, the applicant shall provide
25 information that demonstrates that the vehicle, as configured, has a total combined axle rating
26 capacity equal to or greater than the maximum amount of weight for which a special permit is
27 sought. The information may include, but not be limited to, the manufacturer's rated capacity. In
28 the event that manufacturer's rated capacity is not available, any other information reasonably
29 determined by the ~~secretary of the Department of Transportation~~ Commissioner of the Division of
30 Highways to give evidence of adequate combined axle rating capacity may be submitted.

31 (e) Special permits authorized by this section shall be issued by the commission on forms
32 prescribed and furnished by it. The special permit indicium shall be permanently affixed
33 immediately below the window glass on the top of the door on the driver's side of the vehicle.
34 Lost, destroyed, stolen, or otherwise unusable special permits indicia shall be replaced in
35 accordance with legislative rules to be promulgated by the commission. The special permit
36 indicium shall be issued to a particular vehicle and shall remain with the vehicle upon transfer of
37 possession or ownership of the vehicle.

38 (f) Special permits issued pursuant to the provisions of this article are valid for a period of
39 one year from the date of purchase: *Provided*, That no renewal permits shall be issued to any
40 permittee who, at the time of the renewal, has any administrative or criminal actions pending
41 relating to the operation of commercial motor vehicles in this or other states.

42 (g) For purposes of this section, the dimensional requirements of motor vehicles shall
43 conform to all applicable federal laws and regulations. Nothing in this section may be construed
44 or administered to jeopardize the receipt of federal funds for highway purposes.

45 (h) Any operator of a vehicle with a special permit issued under the provisions of this article
46 shall submit the vehicle or combination of vehicles to weighing with portable or stationary weighing
47 devices as required by §17C-17-10 of this code. Any driver or owner of a vehicle or combination
48 of vehicles operating under the provisions of this section who fails or refuses to comply with any
49 requirement of §17C-17-10 of this code forfeits all privileges granted by the special permits.

50 (i) Any vehicle or combination of vehicles transporting coal pursuant to the provisions of
51 this article shall be securely covered to prevent the escape of the load on any trip exceeding a
52 total distance of one mile on any public highway.

53 (j) As a condition of receipt of a special permit, vehicle owners and operators shall submit
54 permitted vehicles to safety checks and other vehicle inspection requirements as required by
55 legislative rules of the commission. The commission may impose additional vehicle operation and
56 maintenance requirements by rule as the commission deems appropriate to assure the safe
57 operation of vehicles issued a special permit.

58 (k) The commission shall propose rules in accordance with the provisions of §29A-3-1 *et*
59 *seq.* of this code regarding the implementation of the requirements of this section. ~~The rules shall~~
60 ~~be initially promulgated as emergency rules pursuant to the provisions of said article by no later~~
61 ~~than October 1, 2003~~

62 (l) The payment of the special permit fee is in addition to any state registration fee, user
63 fee, or other decal fee.

64 (m) All revenues generated pursuant to this section shall be credited to a special account
65 within the road fund which is created and shall be designated as the Coal Resource
66 Transportation Road Fund. Moneys of in the fund shall be used by the Division of Highways for
67 construction, maintenance, and repair of public highways and bridges over which substantial
68 quantities of coal are transported.

69 (n) For periods of less than one year, the permit fee imposed by subsection (b) of this
70 section shall be prorated to the nearest month.

**§17C-17A-12. Designating special coal resource transportation roads, highways, and
bridges.**

1 (a) ~~From those counties and districts described in §17C-17A-3(a) of this code~~ Upon receipt
2 of an application for designation, the Commissioner of the Division of Highways shall ~~identify~~
3 determine whether those public roads, highways, and bridges ~~used during the previous twelve-~~

4 ~~month period for transportation of quantities of coal in excess of fifty thousand tons or projected~~
5 ~~to be used for transporting quantities of coal in excess of fifty thousand tons during the ensuing~~
6 ~~year~~ are appropriate for designation as part of the coal resource transportation road system, which

7 ~~The identification process shall include the following as to each discretely identifiable section of~~
8 ~~the public highway:~~

9 (1) The current condition of the public roads, highways, and bridges;

10 (2) The estimated quantities of coal to be transported;

11 (3) Any planned or necessary maintenance or improvement;

12 (4) The number of ~~truck loads~~ truckloads of coal estimated to be transported in an average
13 day; and

14 ~~(5) Any anticipated increase or decrease in the quantity of coal being transported; and~~

15 ~~(6)~~ (5) Other information determined by the commissioner to be relevant.

16 (b) ~~Upon completion of the identification process, but in no event later than July 1, 2003,~~
17 ~~the~~ Upon consideration of the criteria set forth in subsection (a) of this section, the commissioner

18 shall designate by order an ~~interim coal resource transportation road system consisting of those~~
19 ~~public roads, highways, bridges or segments thereof~~ a public road, highway, bridge, or segment

20 ~~thereof as part of the coal resource transportation road system~~ which may be used as a special
21 ~~coal haulage roads~~ road consistent with the authority contained in this article, ~~The commissioner~~

22 ~~shall establish a process for the receipt and evaluation of public comment on the designations~~
23 ~~contained within the interim coal resource transportation road system and~~ shall designate weight

24 limits and other conditions for use of the ~~coal resource transportation road system~~ as public
25 interest so provides. The commissioner shall publish and update a directory, including supporting

26 maps and other documents, of the ~~interim coal resource transportation road system.~~

27 ~~(c) By no later than January 1, 2004, the Commissioner shall designate by order the coal~~
28 ~~resource transportation road system and shall publish a directory, including supporting maps and~~

29 ~~other documents, of that road system.~~

30 ~~(d)~~ The commissioner shall establish a process for periodic evaluation of the designations
31 contained in the coal resource transportation road system in order to add to or delete from the
32 road system certain additional sections of public highways. ~~Provided, That the evaluations and~~
33 ~~modifications of the road system shall be completed at a minimum on an annual basis~~

34 ~~(e)~~ (c) Effective ~~July 1, 2005~~ July 1, 2020, there is created the ~~coal resource transportation~~
35 ~~designation committee~~ Coal Resource Transportation Advisory Committee, the purpose of which
36 is to ~~approve~~ advise the commissioner on the designation of ~~additional~~ and decertification of coal
37 resource transportation roads pursuant to the provisions of this section. ~~Provided, That the~~
38 ~~committee may only consider those applications for designation of roads, highways and bridges~~
39 ~~not located within those whole counties identified in section three of this article~~ If the committee
40 does not recommend the designation or decertification it may provide recommendations to
41 address its specific concerns.

42 ~~(f)~~ (d) The committee consists of the following members:

43 (1) The Commissioner of the Division of Highways, or his or her designee;

44 (2) The Superintendent of the State Police, or his or her designee;

45 (3) One member who is representative of the coal industry, to be appointed by the
46 Governor;

47 (4) One citizen member from the largest citizen action group, to be appointed by the
48 Governor; ~~and~~

49 (5) One member of the largest organization representing coal miners, to be appointed by
50 the Governor;

51 (6) One member of the largest organization representing the trucking industry, to be
52 appointed by the Governor; and

53 (7) The director of the Transportation Division of the Public Service Commission.

54 ~~(g)~~ (e) The Governor shall appoint members with the advice and consent of the Senate.
55 Appointed members shall serve for terms of three years. ~~No member may be appointed to serve~~

56 ~~more than two consecutive terms.~~ The committee shall annually nominate from its members a
57 chair, who shall hold office for one year.

58 (h) (f) The public members of the committee may receive compensation for attendance at
59 official meetings, not to exceed the amount paid to members of the Legislature for their interim
60 duties as recommended by the Citizens Legislative Compensation Commission and authorized
61 by law. Committee members may be reimbursed for actual and necessary expenses incurred for
62 each day or portion of a day engaged in the discharge of committee duties in a manner consistent
63 with guidelines of the travel management office of the Department of Administration.

64 (i) (g) The ~~committee~~ commissioner shall accept applications from any person for
65 designation or decertification of public roads, highways, and bridges, or segments thereof in any
66 county in the state, which may be used as special coal haulage roads consistent with the authority
67 contained in this article. The ~~committee~~ commissioner shall establish a process for the receipt
68 and evaluation of public comment on the designations contained in applications, which shall
69 include a public meeting in the county wherein the public road, highway, or bridge is located:
70 Provided, That, where a public road, highway, or bridge is located in more than one county, the
71 public meeting shall be conducted in the county containing the longest mileage under designation.
72 ~~Provided, That, prior to any designation the committee shall first have held a public hearing in the~~
73 ~~county wherein the public road, highway or bridge is located: Provided, however, That, where a~~
74 ~~public road, highway or bridge is located in more than one county, the hearing shall be conducted~~
75 ~~in the county containing the longest mileage under designation: Provided further, That prior to any~~
76 ~~public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal~~
77 ~~advertisement~~

78 (j) (h) Once an application has been approved by the ~~committee~~ commissioner and the
79 public road, highway, or bridge has become part of the coal resource transportation road system,
80 such route must be used for coal haulage pursuant to the provisions of this article within one year
81 of its designation. In the event any public road, highway, or bridge that is part of the coal resource

82 transportation road system ceases to be used for coal haulage for a period of time exceeding one
83 year, then such route may be decertified by the ~~committee~~ commissioner upon application by any
84 person. The commissioner shall utilize the same process for decertification as for designation as
85 part of the coal resource transportation system. *Provided,* That prior to any decertification the
86 ~~committee shall first have held a public hearing in the county wherein the public road, highway,~~
87 ~~or bridge is located:~~ *Provided, however,* That where a public road, highway or bridge is located in
88 more than one county, the hearing shall be conducted in the county containing the longest mileage
89 under decertification: *Provided further,* That prior to any public hearing the applicant shall cause
90 notice of such public hearing or hearings by Class I legal advertisement.

91 (k) ~~Prior to rendering a final decision on any application for designation or decertification~~
92 ~~of a coal resource transportation road, the committee shall first report its findings and~~
93 ~~recommendations on each pending application to the Joint Committee on Government and~~
94 ~~Finance. The Joint Committee on Government and Finance may comment on the application~~
95 ~~which comments shall be considered by the committee. The committee may not make final any~~
96 ~~designation or decertification before thirty days after reporting its findings and recommendations~~
97 ~~on an application to the Joint Committee on Government and Finance.~~

98 (l) ~~The coal resource transportation designation committee created in this section shall~~
99 ~~report its activities to the Secretary of Transportation who will provide the necessary staff to assist~~
100 ~~the committee in the discharge of its functions pursuant to this section~~