

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 2726**

BY DELEGATES CAPITO, ROWE AND L. PACK

[Originating in the Judiciary Committee; March 18, 2021]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §17-30-1 and §17-30-2; to amend and reenact §29-2A-3 and §29-2A-12 of  
3 said code; and to amend said code by adding thereto a new section, designated §29-2A-  
4 12a, all relating to use of airspace; use of space above and below public roads; permit by  
5 political subdivisions of space above or below public roads owned or controlled by political  
6 subdivisions; procedure to be followed in permitting by political subdivisions of space  
7 above or below public roads owned or controlled by political subdivisions; powers and  
8 duties of the West Virginia State Aeronautics Commission; operation of manned aircraft  
9 at low altitude; low or dangerous flight of unmanned aircraft; landing of unmanned aircraft  
10 on land or water of another.

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

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 30. PERMITTING SPACE ABOVE AND BELOW PUBLIC ROADS.**

#### **§17-30-1. Permit by political subdivisions of space above or below public roads owned or controlled by political subdivisions.**

1 Any political subdivision holding the easement or fee title to a road, public road, highway,  
2 open country highway, urban street, suburban street, state road, or public roads, as those terms  
3 are defined in §17-1-1 et seq. of this code, shall, by permit, authorize the space above or below  
4 that road, public road, highway, open country highway, urban street, suburban street, state road,  
5 or public road to be used for private purposes for such period as the governing body determines  
6 the space will not be needed for public purposes, and upon other terms and conditions the  
7 governing body finds to be in the public interest: *Provided*, That no permit which is granted under  
8 the authority granted in this section may authorize the permittee to use the permitted space in any  
9 manner which is prohibited by federal law, rules, and/or regulations: *Further provided*, That no  
10 political subdivision may charge a fee for any permits authorized by this article.

**§17-30-2. Procedure to be followed in permit by political subdivisions of space above or below public roads owned or controlled by political subdivisions.**

1 Before issuing a permit authorizing use of the space, the governing body shall determine  
2 that the use of the space will not unreasonably interfere with the public use and utility use of the  
3 road, public road, highway, open country highway, urban street, suburban street, state road, or  
4 public road, and shall notify the property owners abutting the space proposed to be permitted  
5 under this section and give them an opportunity to be heard informally and at public hearing with  
6 respect to the proposed permitting. The permitted use of space above or below a street or highway  
7 for private purposes shall not affect a prior dedication or grant of the area for street or highway  
8 purposes.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 2A. STATE AERONAUTICS COMMISSION.**

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

1 (a) The commission may enter into any contracts necessary to the execution of the powers  
2 granted to it by this article. It is empowered and directed to encourage, foster, and assist in the  
3 development of aeronautics in this state and to encourage the establishment of airports and air  
4 navigation facilities. It shall cooperate with and assist the federal government, the municipalities  
5 of this state, and other persons in the development of aeronautics and shall act to coordinate the  
6 aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate  
7 with the commission in the development of aeronautics and aeronautics facilities in this state. The  
8 commission is hereby given the power and authority to make such rules, policies, and guidelines  
9 as it may deem necessary and advisable for the public safety, governing the designing, laying  
10 out, locating, building, equipping and operating of all airports and the conduct of all other phases  
11 of aeronautics to effectuate the requirements of this article.

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

20           (2) (c) Except where otherwise prohibited, the commission is authorized to permit the  
21 West Virginia Board of Treasury Investments or the West Virginia Investment Management Board  
22 to invest, as provided by this code, any funds received by the commission pursuant to the  
23 provisions of this code.

24           (d) Nothing in this chapter may be construed to interfere with the airspace rights of private  
25 landowners; the ownership of the space above the lands and waters of this state is declared to  
26 be vested in the several owners of the surface beneath.

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

1           No person shall operate ~~an~~ a manned aircraft at an altitude of less than one thousand feet  
2 over any city, town, or village, or public gathering elsewhere, except at a duly established airport  
3 or when necessary to make a safe and proper landing or take off in an emergency or at a duly  
4 established airport.

5           No person shall operate an aircraft in the air over, or on the ground or water within this  
6 state in a careless and reckless manner in willful or wanton disregard of the rights or safety of  
7 others, or without due caution and circumspection and in a manner so as to endanger or be likely  
8 to endanger any person or property.

9           A person violating any of the provisions of this section shall be guilty of a misdemeanor,  
10 and, upon conviction thereof, shall be punished by a fine of not more than \$500 or by confinement  
11 in jail for not more than one year, or both fined and confined.

**§29-2A-12A. Low or dangerous flight of unmanned aircraft; landing on land or water of  
another.**

1           (a) Flight of an unmanned aircraft over the lands and waters of this state is lawful unless  
2 it is:

3           (1) At such a low altitude as to interfere with the existing use to which the land or water,  
4 or the space over the land or water, is put by the owner;

5           (2) Conducted as to be imminently dangerous to persons or property lawfully on the land  
6 or water; or

7           (3) In violation of the air commerce regulations promulgated by the United States  
8 Department of Transportation.

9           (b) The landing of an unmanned aircraft, on the lands or waters of another, without his or  
10 her consent, is unlawful, except in the case of a forced landing. For damages caused by a forced  
11 landing, however, the owner, operator or lessee of the aircraft, or the airman is liable for actual  
12 damage caused by the forced landing.

13           (c) Except as provided in subsection (a) of this section, nothing in this chapter may be  
14 construed to prevent an operator or pilot from operating an aircraft, including an unmanned  
15 aircraft, over his or her own property.

NOTE: The purpose of this bill is to allow for permits to use air space above public roads and highways owned or controlled by political subdivisions of the state, and the safe operation of unmanned aircraft.

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