

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2761**

BY DELEGATES ZUKOFF AND FLUHARTY

[Introduced February 25, 2021; Referred to the  
Committee on Technology and Infrastructure then  
Energy and Manufacturing]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new  
2 sections, designated §17-4-56 and §22-1-18, all related to authorizing the Division of  
3 Highways to assess local impacts to roadways for activities permitted by the Department  
4 of Environmental Protection; authorizing the Commissioner of the Division of Highways to  
5 promulgate legislative rules relating to the types of activities permitted by the Department  
6 of Environmental Protection that require a road use review by the Commissioner as a  
7 condition of the Department of Environmental Protection's permit; authorizing the  
8 Commissioner to promulgate a form to be completed by certain permit applicants to assess  
9 road impacts by construction and operation of permitted activities; providing legislative  
10 findings; providing for right of administrative review of roadway conditions directives prior  
11 to enforcement as a condition of environmental permit; and providing for actions by the  
12 agencies to effectuate these provisions.

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

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

### **ARTICLE 4. STATE ROAD SYSTEM.**

#### **§17-4-56. Assessing local road impacts by construction and operation of activities permitted by the Department of Environmental Protection.**

1 (a) The Commissioner of the Division of Highways shall promulgate a legislative rule,  
2 pursuant to §29A-3-1 et seq. of this code, providing the types of activities permitted by the  
3 Department of Environmental Protection that shall include a local roadway impact assessment to  
4 be provided as a condition of any permit issued by the Department of Environmental Protection  
5 pursuant to Chapter 22 of this code. The purpose of the application and review by the  
6 commissioner is to assure that any damage or adverse impacts to the local road system by the  
7 permitted activity shall be addressed by the permittee as a condition of a Department of  
8 Environmental Protection permit. The commissioner shall promulgate a form to be provided to the

9 Department of Environmental Protection for use by applicable permit applicants which will be  
10 submitted to both the Department of Environmental Protection and the commissioner, providing  
11 an assessment of types and frequency of all vehicles that will use roadways in the area of the  
12 permitted operation during construction and operation, and any relevant information that in the  
13 judgement of the commissioner is necessary to properly assess the activity's impacts on the local  
14 roadway system.

15 (b) The Commissioner shall provide by legislative rule, what types of activities regulated  
16 by the Department of Environmental Protection have the potential to adversely impact local  
17 roadways. The Commissioner may exempt types of permitted activities that in his or her  
18 judgement do not require review under the provisions of this section. If sufficient evidence shows  
19 that the planned activities will cause significant wear or damage to local roadways or create a  
20 traffic safety issue, the commissioner shall enter into an agreement with the permittee for repairs,  
21 improvements or maintenance of the impacted roadway. Each permittee shall comply with the  
22 commissioner's directives and conditions, and upon notice of failure to comply with these  
23 directives, following the exhausting of administrative remedies relating to any dispute relating to  
24 conditions or limitations placed upon the permittee by the commissioner, shall be deemed a  
25 violation of any permit issued pursuant to Chapter 22 of this code.

26 (c) Activities covered for commercial hauling of coal pursuant to §17C-17A-1 et seq. of  
27 this code and the oil and gas certification required pursuant to §22-6A-20 of this code are  
28 exempted from applicability of the provisions of this section.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

#### **§22-1-18. Permitting coordination with the Department of Highways.**

1 (a) *Legislative findings-* Many activities permitted and regulated by the Department  
2 pursuant to this chapter require the utilization of roads throughout the state. Because of the

3 nature of these activities often require large construction projects and industrial sized operations  
4 in a diverse variety of locations which can significantly impact roadways in rural areas of the state  
5 where the previously existing use was predominantly residential and agricultural, and roadway  
6 conditions and use can be significantly impacted by large numbers of commercial and  
7 construction vehicles utilizing the road system during construction and operation of a permitted  
8 activity. Therefore, proper assessment and preservation of roadways should be coordinated with  
9 the Department of Highways as a condition of any permit issued by the Department. This process  
10 will assure that the existing road system is suitable and sufficient for large new road use activities,  
11 and if it is not, that improvements and alterations to the roadway may be required to fairly preserve  
12 previous roadway uses, safety and conditions. Therefore, the Department shall include, as a  
13 condition of permits issued pursuant to this chapter, a roadway utilization review that is reviewed  
14 by the Department of Highways relating to all types of regulated activities reasonably anticipated  
15 to create additional uses and impacts on local roadways in proximity to the permitted activities  
16 that result as part of the normal operating of that activity.

17 (b) Department of Highways review of permits for roadway impacts- The Department shall  
18 include in each applicable permit application a form for the applicant to complete. Any permit  
19 issued pursuant to this chapter shall require conditions established by the Department of  
20 Highways to preserve the existing uses, safety and condition of any roads, bridges or other  
21 improvements be preserved.

22 (c) Assessments- The assessment form shall be promulgated by the Department of  
23 Highways pursuant to §17-4-56 of this code. This form shall be included in any activity that the  
24 Division provides for activities designated by the Department of Highways as necessary pursuant  
25 to its legislative rules. Upon receipt of a completed form, it shall be immediately forwarded to  
26 designated Highway personnel. If the Department at any point during or after the permitting  
27 review process submits criteria for the permit applicant to comply with to assure the preservation  
28 of the local roadways impacted by the construction or operation of the permitted activity, those

29 directives shall be enforceable as conditions of the Department's permit, and failure to comply  
30 with the Department of Highways agreement will be equivalent to a permit violation pursuant to  
31 this Chapter.

32 (d) Permit disputes- If there are objections to the conditions established by the  
33 Commissioner of the Department of Highways may be appealed and adjudicated pursuant to the  
34 Department of Highways administrative review process. During any such appeal, the Department  
35 may proceed to issue a permit to the applicant. Upon exhaustion of any administrative appeal of  
36 a Highways directive from the permittee, the conditions of the Department of Highways are  
37 incorporated under a permit issued by the Department, and upon notice to the Department, the  
38 permit shall be suspended or conditioned upon compliance with the Department of Highways  
39 directive.

NOTE: The purpose of this bill is to assure that existing uses and conditions of roadways of this state, when impacted by a permitted activity by the Department of Environmental Protection, that a review by the Division of Highways be conducted, and when necessary, an agreement to remediate adverse roadway impacts be required as a condition of an environmental permit being issued.

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