

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 408

FISCAL  
NOTE

BY SENATORS SMITH AND MARONEY

[Introduced February 23, 2021; referred  
to the Committee on Transportation and  
Infrastructure; and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §17-2A-6b; to amend said code by adding thereto a new section, designated  
3 §17-3-11; and to amend said code by adding thereto a new article, designated §17-30-1,  
4 §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating generally to enhancing  
5 maintenance and repair of the state's roads and highways; establishing roads  
6 accountability and transparency; directing the State Auditor to develop and maintain a  
7 searchable website of funding actions and expenditures relating to state and public roads;  
8 setting forth the minimum content to be contained in the website; directing the  
9 Commissioner of Highways to provide information and data to the State Auditor; requiring  
10 an annual update to the Joint Committee on Government and Finance; creating the  
11 Special Road Repair Fund as a subaccount of the State Road Fund; authorizing the  
12 commissioner to transfer certain funds into the subaccount for certain purposes; creating  
13 the Enhanced Road Repair and Maintenance Program; stating legislative findings and  
14 purpose of program; requiring Division of Highways county supervisors consult with county  
15 commissions and legislators to submit project requests to the Division of Highways; setting  
16 forth a funding formula; setting forth requirements concerning bidding, vendors, and  
17 contracts with private vendors; specifying uses of Special Road Repair Fund; defining  
18 terms; providing requirements for commissioner of Highways and districts; requiring for  
19 rulemaking; and requiring reporting by Division of Highways and Legislative Auditor.

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

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

### **§ 17-2A-6b. Country roads accountability and transparency.**

1 (a) The Legislature finds that taxpayers should be able to easily access the details of how  
2 the State is spending their tax dollars to build and repair state and public roads. The taxpayers  
3 should also be able to easily access and compare the budgeted moneys and the performance  
4 results that are achieved for those expenditures. It is the intent of the Legislature, therefore, to

5 direct the Auditor to create and maintain a searchable website detailing where, how much, and  
6 from what source the taxpayer moneys in state government are expended for payment to third-  
7 party vendors for state roads.

8 (b) No later than July 1, 2021, the Auditor shall develop and make publicly available a  
9 searchable website containing, at a minimum, the following information for a given fiscal year,  
10 and the three immediately preceding fiscal years, to the extent that the commissioner has the  
11 ability to provide the information to the Auditor:

12 (1) The project number or name for each state road in which moneys have been expended  
13 to pay vendors to build, repair or maintain a state road;

14 (2) The county location for each such project;

15 (3) The funding source for a given funding action or expenditure to pay vendors;

16 (4) The budget program or activity related to a given funding action or expenditure;

17 (5) The name and the address, principal location, or residence of the vendors receiving  
18 payment from a given funding action or expenditure; and

19 (6) Additional information as to the funding action or expenditure the Auditor considers  
20 valuable for the public.

21 (c) For the purposes of this section:

22 “Auditor” means the State Auditor of West Virginia, or his or her designee appointed to  
23 perform the service.

24 “Funding action or expenditure” includes details on the type of spending to vendors,  
25 including, but not limited to, grants, contracts, and any expenditure from the State Road Fund,  
26 federal funds, special revenue funds, including any civil contingency or similar fund. Where  
27 possible, a hyperlink to the actual grants or contracts shall be provided.

28 “Funding source” means the state account from which the funding action or expenditure  
29 is appropriated.

30 “Searchable website” means a website that allows the public at no cost to search and

31 aggregate information regarding the State's budget and spending for state roads.

32 "Vendor" means any person or entity that is authorized by the State of West Virginia to  
33 supply the Division of Highways with commodities or services.

34 (d) The searchable website shall be updated periodically as new data becomes available  
35 and is submitted by the commissioner to the Auditor. The commissioner shall provide to the  
36 Auditor, in a format specified by the Auditor, all the data that is required to be included in the  
37 searchable website no later than 30 days after the data becomes available to the agency. The  
38 Auditor shall provide guidance and specifications to the commissioner to promote compliance  
39 with this section. The commissioner and the Auditor shall communicate and cooperate to develop  
40 methodologies for the efficient transfer of the data, including, but not limited to, methodologies to  
41 convert noncompatible electronic formats of data into data formats that can be reasonably  
42 converted and transferred to the website.

43 (e) The Auditor and the commissioner shall each report to the Joint Committee on  
44 Government and Finance and the Legislative Oversight Commission on Department of  
45 Transportation Accountability as to the status of the website and shall advise the committee and  
46 the commission of any issues related to the transfer and receipt of the information from the  
47 commissioner to the Auditor in a timely manner as required in this section. The reports shall be  
48 submitted at the end of each quarter for the 2021-2022 fiscal year; and annually thereafter,  
49 beginning December 1, 2022, and on December 1 of each year thereafter, until the Joint  
50 Committee finds that the annual reports are no longer required.

### **ARTICLE 3. STATE ROAD FUND.**

#### **§17-3-11. Special Road Repair Fund.**

1 There is created a special subaccount in the State Road Fund, designated the Special  
2 Road Repair Fund, to be expended solely for the purposes specified in §17-30-1 et seq. of this  
3 code for the maintenance and repair of the state's roads and highways. The commissioner is  
4 hereby authorized to transfer no more than \$80 million to this subaccount from the State Road

5 Fund in any fiscal year for the sole purpose of repairs of nonfederal aid eligible roads.

**ARTICLE 30. ENHANCED ROAD REPAIR AND MAINTENANCE PROGRAM.**

**§17-30-1. Legislative finding; purpose.**

1 The Legislature finds that the Division of Highways, through no fault of its own, struggles  
2 to maintain roadways to the expectation of the citizens of this state. The purpose of the Enhanced  
3 Road Repair and Maintenance Program established in this article is to increase the utilization of  
4 private vendor contractors to provide maintenance and road repair services for the Division of  
5 Highways in districts where there is an established need so that this state's roads will be properly  
6 maintained and usable by the citizens of this state.

**§17-30-2. Establishment of the Enhanced Road Repair and Maintenance Program.**

1 (a) The Enhanced Road Repair and Maintenance Program is created within the Division  
2 of Highways, to be administered by the division in accordance with the provisions of this article.

3 (b) To accomplish the goals of the program, the Division of Highways county supervisor  
4 in each county in consultation with the county commission of each county and any currently  
5 elected member of the Legislature whose district overlaps any portion of the county may submit  
6 to the Division of Highways a list of road repair and maintenance projects in need of repair in their  
7 county. These projects should be limited to roads that are classified as nonfederal aid eligible  
8 county roads. The projects should be listed in priority order according to Division of Highways  
9 average daily traffic counts and the county commission's determination of the roads' level of  
10 disrepair, and should be based upon the funds available to the county from the funding formula  
11 set forth in §17-30-3 of this code. This request is to be made to the Division of Highways by July  
12 1, 2021, and again by July 1, 2022. The Division of Highways is authorized to award funding for  
13 these projects based upon the funding allocation formula set forth in §17-30-3 of this code. This  
14 funding would be the total available to all the counties in the district regardless of whether the  
15 county submitted a request for road repair or maintenance. Work on all projects is subject to the  
16 funding limitations set forth in §17-30-3 of this code.

17 (c) Following receipt of a priority list from all counties in a district, the Division of Highways  
18 shall determine the available funding from the funding formula and ascertain the funding available  
19 to address the submitted projects in the district. If funding is insufficient to address all submitted  
20 projects, the Division of Highways shall notify all the county commissions in the district of the  
21 projects which funding is not sufficient to complete. The funding may only be used for the  
22 purposes set forth in this article and for the projects submitted to the Division of Highways.

23 (d) The Division of Highways shall contract with a private contractor or private contractors  
24 to perform nonfederal aid road repairs and maintenance activities if 50 percent of the core  
25 maintenance projects proposed for completion in the previous year have not been completed and  
26 based upon the award allocation and for the projects as submitted to the Division of Highways as  
27 set forth in subsection (b) of this section. These repairs shall include, but are not limited to, pothole  
28 repair, paving, ditching and mowing on and along each district's roadways. For purposes of this  
29 article, "district" means one of the management areas of the state, which include one or more  
30 counties, established by the Division of Highways, with each district headed by a separate district  
31 engineer or manager.

32 (e) The division shall contract with vendor contractors to complete repair and maintenance  
33 activities for any district if 50 percent of the core maintenance projects proposed in that district for  
34 completion in the previous year have not been completed. Completion of the project by the vendor  
35 is subject, however, to the availability of funds and the availability of acceptable bids from contract  
36 vendors. These repairs shall include, but are not limited to, pothole repair, paving, ditching and  
37 mowing on and along each district's roadways.

38 (f) The Division of Highways and applicable district shall ensure that, alongside roads  
39 being paved, all drainage work, including any necessary ditching and installation of culverts, if  
40 necessary, has been performed in the state's rights-of-way prior to such paving work.

**§17-30-3. Funding formula for Special Road Repair Fund.**

1 (a) Funding for the grants shall be proportionately based upon the total mileage of

2 nonfederal aid eligible county routes in each district, excluding where core maintenance was  
3 completed within the previous year, as those figures are maintained by the Division of Highways:  
4 Provided, That no county shall receive less than \$1 million of the available funding.

5 (b) The Division of Highways shall promulgate emergency rules pursuant to the provisions  
6 of §29A-3-15 of this code to develop a funding mechanism proportionately based upon the  
7 nonfederal aid mileage in each county.

**§17-30-4. Funding from Special Road Repair Fund; bidding, contracting and vendor requirements.**

1 (a) Funds in the Special Road Repair Fund created by §17-3-11 of this code shall be  
2 allocated by the West Virginia Commissioner of Highways for the payment of vendor contracts  
3 among the districts for repair and maintenance of nonfederal aid roads.

4 (b) The division must use the funds for the purpose of contracting with a vendor to perform  
5 certain repair and maintenance activities in the district as set forth in this article. The Division of  
6 Highways may provide supplemental funds to a district in need if additional funds are available in  
7 the Special Road Repair Fund. Any additional funds shall be used for completion of the projects  
8 originally submitted by the county commission.

9 (c) The Division of Highways shall process bids and award contracts in accordance with  
10 the current bid and contract review processing requirements of the division.

11 (d) Notwithstanding any other provision of this code to the contrary, the bidding and vendor  
12 contracting process provided for in this article shall be conducted in accordance with the most  
13 efficient procedures available to the Division of Highways. The division may only require that the  
14 vendor provide the applicable insurance coverage and necessary bond and surety.

15 (e) Vendor contractors performing work pursuant to a contract as provided in this article  
16 shall follow all work, operating, and safety procedures and requirements prescribed by the  
17 Division of Highways.

**§17-30-5. Reporting requirements by Division of Highways and Legislative Auditor.**

- 1           (a) By November 1, 2021, and on November 1 of each year thereafter, the Division of  
2 Highways shall present a report to the Joint Committee on Government and Finance as to the  
3 status and progress of the program together with any suggested legislation to address any issues  
4 related thereto no later than November of the following fiscal year. After November 2024, such  
5 reports will no longer be required.
- 6           (b) By December 1, 2021, and by December biennially thereafter, the Legislative Auditor,  
7 in a separate audit report, shall review the program to determine efficacy, economic responsibility,  
8 and other such factors relating to the program and submit a report of his or her findings, together  
9 with any suggested legislation to improve the efficiency and to more economically carry out the  
10 purposes of this article.

NOTE: The purpose of this bill is to enhance maintenance and repair of the state's roads and highways generally. The bill establishes roads accountability and transparency. The bill directs the State Auditor to develop and maintain a searchable website of funding actions and expenditures relating state and public roads. The bill sets forth the minimum content to be contained in the website. The bill directs the commissioner of Highways to provide information and data to the State Auditor. The bill requires an annual update to the Joint Committee on Government and Finance. The bill creates the Special Road Repair Fund as a subaccount of the State Road Fund. The bill authorizes the commissioner to transfer certain funds into the subaccount for certain purposes. The bill creates the Enhanced Road Repair and Maintenance Program. The bill states legislative finding and purpose of program. The bill requires Division of Highways county supervisors consult with county commissions and legislators to submit project requests to the Division of Highways. The bill sets forth a funding formula. The bill sets forth requirements concerning bidding, vendors, and contracts with private vendors. The bill specifies uses of Special Road Repair Fund. The bill defines terms. The bill provides requirements for commissioner of Highways and districts. The bill requires for rulemaking. The bill requires reporting by Division of Highways and Legislative Auditor.

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