

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 5**

BY SENATORS SWOPE, NELSON, BALDWIN, JEFFRIES,  
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[Originating in the Committee on Economic  
Development; reported on January 27, 2022]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §5B-2-18; to amend said code by adding thereto a new section, designated  
3 §5B-2-18a; to amend and reenact §17-2A-19a of said code; and to amend and reenact  
4 §61-16-2 of said code, all relating generally to unmanned aircraft systems; establishing  
5 the West Virginia Unmanned Aircraft Systems Advisory Council; requiring all operators of  
6 unmanned aircraft systems to comply with Federal Aviation Administration regulations;  
7 recognizing ownership of certain airspace above lands and waters of the state; clarifying  
8 the ability of the state Division of Highways to sell unused airspace to multiple bidders;  
9 clarifying the ability of a county or municipality to lease space above a public road under  
10 its control; and including private business owners and industrial facilities as entities  
11 protected by criminal statute relating to prohibited uses of unmanned aircraft systems.

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

## **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

### **ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.**

#### **§5B-2-18. West Virginia Unmanned Aircraft Systems Advisory Council.**

1 (a) The West Virginia Unmanned Aircraft Systems Advisory Council is hereby created  
2 within the Department of Economic Development.

3 (b) The council consists of the following six members, including the chairperson:

4 (1) The Secretary of the Department of Economic Development or his or her designee, ex  
5 officio, who shall serve as the nonvoting chair of the committee;

6 (2) The following five members to be appointed by the Governor and serve at his or her  
7 will and pleasure:

8 (A) One member representing the unmanned aircraft system industry;

9 (B) One member representing the military;

10 (C) One member with experience managing a commercial services airport;

11 (D) One member representing business and industry, generally; and

12 (E) One member representing academia.

13 (3) Members of the council will receive no compensation but are entitled to reimbursement  
14 for mileage expenses while attending meetings of the committee to the extent that funds are  
15 available through the Department of Economic Development.

16 (c) The council shall:

17 (1) Identify trends and technologies driving innovation in unmanned aircraft systems;

18 (2) Develop comprehensive strategies, including, but not limited to, the promotion of  
19 research and development, economic growth, and manufacturing jobs in the unmanned aircraft  
20 system industry in West Virginia; public acceptance of the unmanned aircraft system industry;  
21 business planning; air vehicle technology and manufacturing; and airspace management and  
22 national airspace system integration; and

23 (3) Develop recommended legislation addressing specific issues and in furtherance of the  
24 comprehensive strategies identified in subdivision (2) subsection (c), of this section.

25 (d) The council shall meet at least annually and may convene public meetings to gather  
26 information or receive public comments.

27 (e) The council shall report on the status of its duties, goals, accomplishments, and  
28 recommendations to the Legislature on at least an annual basis.

29 **§5B-2-18a. Applicability of federal laws and Federal Aviation Administration regulations;**  
30 **permissible use of unmanned aircraft.**

31 (a) Notwithstanding any provision of this article to the contrary, any person or entity  
32 operating an unmanned aircraft system may do so in compliance with applicable federal law and  
33 applicable regulations of the Federal Aviation Administration.

34 (b) The ownership of the space above the lands and waters of this state is declared to be  
35 vested in the owner of the surface beneath, but this ownership extends only so far as is necessary

36 to the enjoyment and use of the surface without interference and is subject to the right of passage  
37 or flight of aircraft, including unmanned aircraft systems.

38 (c) Flight by an unmanned aircraft system over the lands and waters of this state is lawful,  
39 unless at an altitude low enough to interfere with the then-existing use to which the land or water  
40 or the space over the land or water is put by the owner or unless so conducted as to be dangerous  
41 or damaging to persons or property lawfully on the land or water beneath.

## CHAPTER 17. ROADS AND HIGHWAYS.

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

#### §17-2A-19a. Transfer of airspace; procedures to be followed.

1 (a) In any instance where the West Virginia ~~department of highways~~ Division of Highways  
2 has or shall hereafter acquire title to the airspace upon and over any highway or right-of-way for  
3 highway purposes, ~~such the department~~ division may, subject to the conditions herein, transfer  
4 such airspace or any part thereof to any person, firm, or corporation by sale, lease, or permit to  
5 use.

6 (b) When such airspace or any part thereof is determined by the commissioner not  
7 necessary or desirable for present or presently foreseeable future state road purposes, it may be  
8 transferred by lease for such period or periods of time and on such terms and conditions, including  
9 consideration, as the commissioner shall determine to be fair and reasonable, or it may be  
10 transferred by sale, or the commissioner may transfer the use thereof by a permit to use such  
11 airspace or any part thereof for such period or periods of time as he or she shall determine and  
12 under such terms and conditions, including consideration, as he or she shall deem fair and  
13 reasonable, except that in the case of a publicly or privately owned utility, no consideration shall  
14 be required for an easement through such airspace or any part thereof.

15 (c) Every such transfer by sale shall be at public auction in the county in which the airspace  
16 to be transferred by sale is located, and the ~~department~~ division shall advertise, by publication,

17 the time, place, and terms of such sale at least 20 days prior thereto. The publication shall be  
18 published as a Class I-O legal advertisement in compliance with the provisions of ~~article three,~~  
19 ~~chapter fifty-nine~~ §3-59-1 et seq. of this code, and the publication area for such publication shall  
20 be the county in which the airspace to be transferred by sale is located. The airspace shall be  
21 sold in a manner which will bring the highest and best ~~price~~ prices therefor. The ~~department~~  
22 division may reject any or all bids received at the sale. The commissioner shall keep a record,  
23 open to public inspection, indicating the newspapers in which the airspace to be transferred by  
24 sale was publicly advertised for sale, the highest ~~bid~~ bids received therefor, and from what ~~party~~  
25 parties, the ~~party~~ parties to whom sold, and the ~~payment~~ payments received therefor. Such record  
26 shall be kept for a period of five years and may thereafter be destroyed. Every such transfer by  
27 lease with any party other than another agency of this state or any county or municipality in this  
28 state or any agency thereof shall be upon the basis of competitive bids solicited by publication of  
29 a notice of the proposed lease published as a Class I-O legal advertisement in compliance with  
30 the provisions of ~~article three, chapter fifty-nine~~ §59-3-1 et seq. of this code, and the publication  
31 area for such publication shall be the county in which the airspace to be transferred by lease is  
32 located.

33 (d) The commissioner shall adopt and promulgate rules and regulations governing and  
34 controlling the transferring of airspaces by sale, lease, or permit to use, pursuant to the provisions  
35 of this section, which rules and regulations shall provide for the giving of preferential treatment in  
36 making leases or issuing permits to use to the persons from whom the airspace was acquired, or  
37 their heirs or assigns.

38 (e) The commissioner may insert in any instrument executed pursuant to the provisions of  
39 this section such conditions as are in the public interest and have been approved in advance by  
40 the Governor.

41 (f) All moneys received from the sale or lease of, or permit to use, any airspace or any part  
42 thereof, shall be paid into the State Treasury and credited to the state road fund.

43 (g) Nothing in this section shall be construed to prohibit a county or municipality from  
44 leasing the space above a public road which the county or municipality controls.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.**

#### **§61-16-2. Prohibited use of an unmanned aircraft system; criminal penalties.**

1 (a) Except as authorized by the provisions of this article, a person may not operate an  
2 unmanned aircraft system:

3 (1) To knowingly and intentionally capture or take photographs, images, video, or audio of  
4 another person or the private property of another, including private business owners and industrial  
5 facilities, without the other person's permission, in a manner that would invade the individual's  
6 reasonable expectation of privacy, including, but not limited to, capturing, or recording through a  
7 window;

8 (2) To knowingly and intentionally view, follow, or contact another person or the private  
9 property of another without the other person's permission in a manner that would invade the  
10 individual's reasonable expectation of privacy, including, but not limited to, viewing, following, or  
11 contacting through a window;

12 (3) To knowingly and intentionally harass another person;

13 (4) To violate a restraining order or similar judicial order;

14 (5) To act with a willful wanton disregard for the safety of persons or property; or

15 (6) To knowingly and intentionally operate an unmanned aircraft system in a manner that  
16 interferes with the official duties of law enforcement personnel or emergency medical personnel.

17 (b) Any person violating the provisions of subsection ~~(a)~~ (c) of this section is guilty of a  
18 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than  
19 \$1,000, or confined in jail for not more than one year, or both fined and confined.

20           (c) Any person who equips an unmanned aircraft system with any deadly weapon or  
21 operates any unmanned aircraft system equipped with any deadly weapon, other than for military  
22 in an official capacity, is guilty of a felony and, upon conviction thereof, shall be fined not less than  
23 \$1,000 nor more than \$5,000, or imprisoned in a state correctional facility for not less than one  
24 nor more than five years, or both fined and imprisoned.

25           (d) Any person who operates an unmanned aircraft system with the intent to cause  
26 damage to or disrupt in any way the flight of a manned aircraft is guilty of a felony and, upon  
27 conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, imprisoned for not  
28 less than one nor more than five years, or both fined and imprisoned.

29           (e) A person that is authorized by the Federal Aviation Administration to operate  
30 unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system  
31 in this state for such purposes if the unmanned aircraft system is operated in a manner consistent  
32 with federal law.