

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 110

FISCAL
NOTE

By Senators Smith, Chapman, and Taylor

[Introduced January 11, 2023; 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 §17-3-11; and to amend said code by adding thereto a new article, designated
 3 §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating generally to enhancing
 4 maintenance and repair of the state’s roads and highways; creating the Special Road
 5 Repair Fund as a subaccount of the State Road Fund; authorizing the Commissioner of the
 6 Division of Highways to transfer certain funds into the subaccount for certain purposes;
 7 creating the Enhanced Road Repair and Maintenance Program; stating legislative findings
 8 and purpose of program; requiring Division of Highways' county supervisors consult with
 9 county commissions and legislators to submit project requests to the Division of Highways;
 10 setting forth a funding formula; setting forth requirements concerning bidding, vendors,
 11 and contracts with private vendors; specifying uses of Special Road Repair Fund;
 12 providing requirements for the Commissioner of the Division of Highways and districts;
 13 requiring rulemaking; and requiring reporting by Division of Highways and Legislative
 14 Auditor.

Be it enacted by the Legislature of West Virginia:

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 to

2 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 of
2 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 in
4 each county in consultation with the county commission of each county and any currently elected
5 member of the Legislature whose district overlaps any portion of the county may submit to the
6 Division of Highways a list of road repair and maintenance projects in need of repair in their county.
7 These projects should be limited to roads that are classified as nonfederal aid eligible county
8 roads. The projects should be listed in priority order according to Division of Highways average
9 daily traffic counts and the county commission's determination of the roads' level of disrepair, and
10 should be based upon the funds available to the county from the funding formula set forth in §17-
11 30-3 of this code. This request is to be made to the Division of Highways by July 1, 2023, and again
12 by July 1, 2024. The Division of Highways is authorized to award funding for these projects based
13 upon the funding allocation formula set forth in §17-30-3 of this code. This funding would be the
14 total available to all the counties in the district regardless of whether the county submitted a
15 request for road repair or maintenance. Work on all projects is subject to the funding limitations set
16 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 purposes
22 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 commissioner of the Division of Highways for the payment of vendor contracts
3 among the districts for repair and maintenance of nonfederal aid roads.

4 (b) The division shall 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, 2023, 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 2025, reports

5 will no longer be required.

6 (b) By December 1, 2023, and by December 1 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 of the program and to more economically
10 carry out the 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 creates the Special Road Repair Fund as a subaccount of the State Road Fund and authorizes the commissioner of DOH to transfer certain funds into the subaccount for certain purposes. The bill also: creates the Enhanced Road Repair and Maintenance Program; states legislative findings and purpose of the program; requires Division of Highways, and county supervisors consult with county commissions and legislators to submit project requests to the Division of Highways; sets forth a funding formula; sets forth requirements concerning bidding, vendors, and contracts with private vendors; specifies uses of Special Road Repair Fund and provides requirements for the Commissioner of Highways and districts. The bill also 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.