WEST VIRGINIA CODE CHAPTER 17 ARTICLE 17

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§17-17-1. Tolls prohibited except over toll bridges forming part of public road, etc.

No tolls shall be charged or collected for travel upon any of the public roads, streets, or highways of this state, except such tolls as may be authorized under the provisions of this article for travel over a toll bridge forming a part of such public road, street or highway.

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§17-17-2. Bridges over Ohio, Great Kanawha or Big Sandy Rivers; corporations for such purposes.

Corporations may be formed under the provisions of chapter thirty-one of this code for the purpose of bridging the Ohio River. Any such corporation or any railroad corporation is hereby authorized to construct and maintain a bridge across said river in the manner now, or which may hereafter be, provided by the Congress of the United States, upon complying with the requirements, conditions and provisions so prescribed, and not otherwise; and such corporation is authorized to take tolls for the passage of persons, railroad cars, engines, vehicles and other things passing on and over such bridge. Such corporation may obtain the real estate necessary for the construction of its bridge and the approaches thereto, under the provisions of chapter fifty-four of this code, and may purchase from any other corporation which may have taken steps toward the erection of a bridge in the manner aforesaid all the rights, franchises and property it may have acquired. Subscriptions to the stock or bonds of any such corporation may be made by counties, districts and municipal corporations in the manner provided by law; and subscriptions may be made thereto by other corporations, including railroad corporations, with the assent of the holders of two thirds of the stock of any such corporation, at any general or special meeting of the stockholders.

Any corporation heretofore or hereafter formed for the purpose of bridging the Great Kanawha or Big Sandy Rivers, or any railroad corporation constructing such bridge, shall have all the privileges accorded by this section to corporations formed for the purpose of bridging the Ohio River: Provided, however, That every bridge erected across the Great Kanawha River at and above the United States government lock number six, and between said lock number six and the United States government lock number three, shall have at least one channel span, the center of which shall be in the middle of the channel usually run by descending coal fleets in high towing stages; such channel span to have a clear opening of four hundred feet at low waterline, and be at least sixty-five feet above low water: Provided further, That every bridge erected across the Kanawha River at and above the United States government lock number three, and below a point six hundred feet below the intersection at low watermark of Nancy's branch with the Great Kanawha River -- said point being approximately the head of the slack water pool formed by the United States government dam number two -- shall have at least one channel span, the center of which shall be in the middle of the channel usually run by descending coal fleets in high water towing stages; such channel span to have a clear opening of four hundred feet at low water line, and be at least sixty-five feet above low water, except in cases where the United States government may authorize the construction of a bridge of a less height, not, however, to be below the minimum of sixty feet above low water; and said Great Kanawha River may be bridged by any such corporation at or above such point six hundred feet below the intersection at low watermark of Nancy's branch with the Kanawha River, subject only to such terms and conditions, if any, as the United States government acting through its authorized officers may prescribe.

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The benefits of this section shall not inure to any corporation whose corporate rights have lapsed, been forfeited or become forfeitable.

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§17-17-3. Power of bridge corporation to borrow money, mortgage or encumber by deed of trust.

Every corporation formed under the law of this state for the purpose of the construction and maintenance of a bridge or bridges, in addition to the powers heretofore conferred upon or possessed by it, shall have power from time to time to borrow such sums of money as may be necessary for the purposes and business of the company, and to issue bonds, bills of credit or indebtedness and preferred stock, and dispose of the same for any amount so borrowed, and to mortgage or encumber by trust deed its corporate property and franchises to secure payment of any debt contracted by such corporation for its purposes and business; but no such mortgage or trust deed shall be valid, unless authorized by a resolution adopted by the affirmative votes of the holders of a majority of the stock of the company. Any such mortgage or trust deed may include, grant and convey, and make subject to the lien thereof, all betterments, improvements and works made or constructed, and property and franchises acquired and used in the company's business, after the making of such mortgage or trust deed, money and debts due the granting company excepted. The purchaser at any sale under such mortgage or trust deed shall be entitled to such betterments, improvements, works, property and franchises, with the exception aforesaid, as well as the property and franchises granted thereby, owned and possessed by the company at the time of the making of the mortgage or trust deed, under which the sale is made, any other law or statute to the contrary notwithstanding.

All mortgages or trust deeds heretofore made by any bridge company incorporated under the laws of this state, whether the same shall have been executed by virtue of a resolution adopted by a vote of the stockholders, or shall have been executed by virtue of a resolution adopted by the board of directors of such corporation without any action on the part of the stockholders thereof, which purport to grant and convey the property and franchises of the granting company owned and possessed at the time of making the mortgage or trust deed, or such property and franchises, together with property or franchises, or both, of such company which it may have acquired subsequently to the making of such mortgage or trust deed, shall be as valid and effectual for the purpose of effecting such granting and conveyance, and make the same as effectually, as if this section had been in full force before and at the time of the execution of such mortgages or trust deeds; and purchasers at any sales thereunder shall have the same rights, powers and privileges as are by this section conferred upon the purchasers at sales made under mortgages and trust deeds executed by such companies after this code takes effect.

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§17-17-4. When bridge deemed a nuisance; abatement.

Every bridge across the Ohio River hereafter erected or commenced, wholly or in part within the jurisdiction of this state, contrary to the provisions of the two next preceding sections, and every railroad bridge across the Great Kanawha or Big Sandy River hereafter erected or commenced, wholly or in part within the jurisdiction of the state, contrary to the provisions of said sections, shall be deemed a public nuisance, and, so far as the same is within the said jurisdiction, may be abated and the construction thereof prevented and enjoined by presentment, indictment, or bill in equity in the name of the state or other remedy appropriate to the case; and it shall be the duty of the Attorney General, as well as of the prosecuting attorney of the proper county, to cause proper proceedings to be instituted and prosecuted to abate, prevent and enjoin such work, as soon as they shall be credibly informed that the same has been or is about to be commenced. But the provisions of this and the preceding sections shall not apply to the portion of the Great Kanawha above the falls of said river, known as the falls of the Kanawha.

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§17-17-5. Obstruction of navigation by bridge.

Every such bridge shall be so made as not to obstruct the navigation of the watercourse over which it is erected at any ordinary stage of water.

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§17-17-6. Unsafe toll bridge.

Whenever complaint is made to the county court of any county wherein a toll bridge is, that the same is not in a safe condition, it shall order its road engineer or supervisor to inspect the same and report his investigation, and if, after considering such report, the court be of opinion that the bridge is in an unsafe or dangerous condition, it shall make its finding a matter of record, and cause its clerk to certify a copy thereof to the Public Service Commission for action thereon. It shall be the duty of said commission, upon the receipt of such certified record, to summon the corporation or person owning the bridge, or collecting tolls therefrom, to appear before it and make answer respecting such finding, whereupon the commission shall take such action and make such orders respecting such bridge as it may deem just. In case it is determined by the commission, upon such hearing, that the bridge is unsafe for travel, it shall prohibit the further collection of toll thereon until the same is placed in such condition as may be ordered or directed by the commission.

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§17-17-7. Purchase, construction or repair of toll bridge.

When it is necessary to build or repair a toll bridge on any county-district road, or to purchase any existing toll bridge on such road within any county, or across the boundary thereof, the county court of the county may contract for the same, or any part thereof, on such terms as may be agreed upon, and take bond and security from the contractors in the sum of fifty percent of the amount of such contract, and pay for the same out of the county road fund or out of the road funds of the district or districts in which such improvement is located, or by issuing bonds for the amount that may be agreed upon; and to this end the court shall appoint a competent engineer to make a thorough investigation and estimate of the cost of such improvement. Upon receiving the estimate of cost, the court, if satisfied with the correctness of same and the necessity and importance of such improvement, may advertise for and receive proposals and make such other orders in the premises from time to time as shall be necessary and proper.

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§17-17-8. Termination of privilege to erect and maintain toll bridge; toll rates.

When a certificate of incorporation is hereafter obtained for the erection of a toll bridge, if the work be not commenced within one year from the date thereof, or be not completed within five years after such commencement, or if, after its completion, there be an abandonment of the bridge, or a failure for three successive years to keep it in good order, in each of these cases the privilege granted by such certificate shall cease. There may be charged and collected on persons and things passing over any such bridge such reasonable tolls as the corporation may, by resolution, from time to time prescribe, subject, however, at all times to the control of the Public Service Commission.

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§17-17-9. Toll rates for troops.

The tolls for troops or persons in the military or naval service of this state, or of the United States, with their arms, munitions and baggage, shall not exceed on any such bridge one fourth of the tolls for other persons.

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§17-17-10. Payment of toll prior to passage; demand of excessive toll; evading payment of toll.

The proprietor of any toll bridge may require lawful toll to be paid previous to a passage thereover. Whoever shall knowingly or intentionally defraud, or attempt to defraud, the proprietor of any toll bridge by evading, or attempting to evade, the payment of lawful toll for crossing such bridge, or whoever shall aid another to evade, or attempt to evade, the payment of such toll, shall be guilty of a misdemeanor and, for every such offense shall, upon conviction thereof, be fined not in excess of $10.

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§17-17-11. Gatekeeper to keep small change.

A gatekeeper on any toll bridge without an electronic toll collection system, as defined in §17-16D-2 of this code, shall keep such money of small denomination on hand, as may reasonably be required in the ordinary course of business, for making change for passengers, and it is the duty of passengers to offer money for passage of a denomination as near as possible to the amount charged for such passage. This section shall not apply to persons now having a lawful right to pass on such bridge without the payment of toll.

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§17-17-12. Failure to provide gatekeeper and to allow prompt passage.

If at any toll bridge without an electronic toll collection system there be a failure to give any person or property a passage over the same in a reasonable time, the proprietor thereof shall forfeit to such person not less than $2 nor more than $20. If the keeper of any toll bridge without an electronic toll collection system shall absent himself therefrom without leaving any person in charge of the gates thereon, he shall leave the gates open. Any keeper of a toll bridge without an electronic toll collection who shall fail to comply with the requirements of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined $50 for every such offense; and any person injured by such failure shall be entitled to recover therefor from such keeper all damages sustained thereby.

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§17-17-13. Definitions.

As used in this and the following sections of this article, the word "bridge" shall be deemed to include all property, rights and franchises relating thereto, including approaches; the word "improvements" shall mean such repairs, replacements, additions and betterments of and to a bridge acquired by purchase as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such bridge; the term "cost of bridge," as applied to a bridge to be acquired by purchase, shall include the purchase price, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, and all other expenses, including legal fees, trustee's fees, traffic estimates and other estimates, which are necessarily or properly incidental to the acquisition or the improvement or the financing; the term "cost of bridge," as applied to a bridge to be constructed, shall embrace the cost of construction, the cost of all land, property, rights and franchises acquired which are deemed necessary for such construction, financing charges, interest during construction, and all other expenses, including legal fees, trustee's fees, traffic estimates and other estimates, which are necessarily or properly incidental to the construction or acquisition of the necessary land, property, rights and franchises or the financing; the word "commission" shall mean the state bridge commission created by this article, or, if said commission shall be abolished, any board or officer succeeding to the principal functions thereof or upon whom the powers given by this article to said bridge commission shall be given by law; the term "owner" shall include all individuals, incorporated companies, societies or associations having any title or interest in any bridge properties, rights or franchises to be acquired.

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§17-17-14.

Repealed.

Acts, 1932 Ex. Sess., Ch. 1 § 1.

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§17-17-15. Authority to purchase or condemn toll bridges; eminent domain.

The state road commissioner may, with the approval of the Governor, whenever he shall deem it expedient, purchase or condemn any toll bridge or bridges over and across any navigable river lying wholly or partly within the state, or forming a boundary of the state, or any such toll bridge or bridges wholly or partly constructed of such design or designs, and at such locations as he shall approve, or any franchises, permits, and/or contracts for the construction of any such bridge or bridges, title thereto to be taken in the name of the state; and payment of the consideration therefor, whether acquired by eminent domain or purchase, shall be solely by means of or with the proceeds of the bridge revenue bonds hereinafter authorized. The commissioner may also exercise in this state, and in any adjoining state, such powers of eminent domain as may be conferred upon him by any act of another state, or of the Congress of the United States, now in force or which may hereafter be enacted.

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§17-17-16. Repair of toll bridge before purchase.

At or before the time any such bridge shall be acquired by purchase the state road commissioner, he shall determine what repairs, replacements, additions or betterments will be necessary to place the bridge in safe and efficient condition for the use of the public, and to cause an estimate of the cost of such improvement to be made and submitted to the commissioner by an engineer or engineers appointed by the commissioner. Such improvements shall be ordered by the commissioner before the sale of any bridge revenue bonds hereinafter authorized for the purchase of the bridge, and shall be paid for out of the proceeds of such bonds.

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§17-17-17. Construction of toll bridge; purchase of land, etc., therefor.

The state road commissioner may construct, whenever he shall deem such construction expedient, but solely by means of or with the proceeds of the bridge revenue bonds hereinafter authorized, any toll bridge or bridges over and across any river or stream lying wholly or partly within the state or forming a boundary of the state, of such design or designs and at such place or places as may be approved by the state road commission. The commissioner may purchase within this state and within any adjoining state, solely from funds provided under the authority of this article, such lands, structures, rights of way, franchises, easements and other interests in lands, including lands under water and riparian rights of any person, railroad or other corporation or municipality or political subdivision, deemed necessary for the construction of any such bridge, upon terms and at such prices as may be considered by him to be reasonable and can be agreed upon between him and the owner thereof, title thereto to be taken in the name of the state.

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§17-17-18. Power of eminent domain.

Whenever it shall become necessary, the state road commissioner may condemn any interest, franchise, right or privilege, land or improvement which may in his opinion be necessary, in the manner provided by law for the acquisition by this state of property for public purposes. The commissioner may also exercise in this state and in any adjoining state such powers of eminent domain as may be conferred upon the commissioner by any act of the Congress of the United States now in force or which may hereafter be enacted. Title to property condemned shall be taken in the name of the state. The state shall be under no obligation to accept and pay for any property condemned and shall in no event pay for the same except from the funds provided by this article, and in any proceeding to condemn, such orders shall be made by the court having jurisdiction of the suit, action or proceedings as may be just to the state and to the owners of property to be condemned, and a bond or other security may be required by the court securing such owners against any loss or damage to be sustained by reason of the failure of the state to accept and pay for the property, but such bond or security shall impose no liability or debt upon the state as contemplated by the provisions of the Constitution of the state in relation to state debt.

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§17-17-19. Bridge revenue bonds generally.

The West Virginia commissioner of highways may pay the cost as defined hereinabove of any one or more such bridges by the issuance of bridge revenue bonds of the state, by a resolution of the commissioner which shall recite an estimate by the commissioner of such cost, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. The commissioner, after any such issue of bonds or simultaneously therewith, may issue further issues of bonds to pay the cost of any other one or more of such bridges, in the manner and subject to all of the provisions herein contained as to the bonds first mentioned in this section. All such bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code of this state. Such bonds shall bear interest at not more than seven percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates and may be made redeemable at the option of the state, to be exercised by the commissioner, at such price and under such terms and conditions as the commissioner may fix prior to issuance of such bonds. The commissioner shall determine the form of such bonds, including coupons to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the Governor and the commissioner, under the great seal of the state, attested by the Secretary of State, and the coupons attached thereto shall bear the facsimile signature of the commissioner. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The commissioner shall fix the denominations of such bonds, the principal and interest of which shall be payable at the Office of the Treasurer of the State of West Virginia, at the capitol of said state, or, at the option of the holder, at some bank or trust company in the city of New York to be named in the bonds, either in lawful money or in gold coin of the United States, of or equal to the then current standard of weight and fineness, as may be determined by the commissioner. Such bonds shall be exempt from taxation by the State of West Virginia or any county or municipality therein. The commissioner may provide for the registration of such bonds in the name of the owner as to principal alone and as to both principal and interest under such terms and conditions as the commissioner may determine, and shall sell such bonds in such manner as he may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and especially the availability of the proceeds of the bonds when required for payment of the cost of the bridges, such sale to be made at a price not lower than a price which, when computed upon standard tables of bond values, will show a net return of not more than eight percent per annum to the purchaser upon the amount paid therefor.

The proceeds of such bonds shall be used solely for the payment of the cost of the bridges, and shall be checked out by the commissioner and under such further restrictions, if any, as the commissioner may provide. If the proceeds of such bonds, by error or calculation or otherwise, shall be less than the cost of the bridge or bridges, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in

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the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same fund, without preference or priority of the bonds first issued for the same bridge or bridges. If the proceeds of bonds issued for any bridge or bridges shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

Prior to the preparation of definitive bonds, the commissioner may under like restrictions issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article or by the Constitution of the state.

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§17-17-20. Trust agreement respecting bonds.

The state road commissioner may enter into an agreement or agreements with any trust company or with any bank having the powers of a trust company, either within or outside of the state, as trustee for the holders of bonds issued hereunder, setting forth therein such duties of the state and of the commissioner in respect of the acquisition, construction, improvement, maintenance, operation, repair and insurance of the bridges, the conservation and application of all moneys, the insurance of moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the original purchasers of such bonds, and including therein provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders, and providing for approval by the original purchasers of the bonds, of the appointment of consulting engineers and of the security given by those who contract to make improvements, and by any bank or trust company in which the proceeds of bonds or bridge tolls shall be deposited, and for approval by the consulting engineers of all contracts for improvements. All expenses incurred in carrying out such agreement may be treated as a part of the cost of maintenance, operation and repair of the bridge or bridges affected by the agreement.

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§17-17-21. General supervision of bridges under jurisdiction of commissioner.

The commissioner of highways shall properly maintain, repair, operate, manage, and control the bridges owned by the state, fix the rates of tolls and establish bylaws and rules and regulations for the use and operation of the bridges owned by the state, and may make and enter into all contracts or agreements necessary and incidental to the performance of his duties and the execution of his powers under this article, including power to permit use of such bridges owned by the state by street railways and other transportation lines, and telephone, telegraph, pipe, and other lines, and contract with them for such use and fix the terms and conditions thereof and the charges or tolls for such use of the bridges owned by the state.

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§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included in one issue; purchasing of existing bridges; disposition of tolls.

Tolls shall be fixed, charged, and collected for transit over such bridges owned by the state and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges owned by the state for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges owned by the state may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing bridge or bridges owned by the state shall be acquired by purchase, eminent domain, or otherwise, unless the commissioner of highways shall have determined that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if such existing bridge or bridges owned by the state are to be combined with any other bridge or bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in §17-17-23b of this code, unless the commissioner of highways shall have determined that the income from such combined bridges, based upon the toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such combined bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the purchase price of such existing bridge or bridges and the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing, reconstructing, or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof, as may be necessary to pay such cost of maintaining, repairing, and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the West Virginia Municipal Bond Commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the West Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

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Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved by the state, under the provisions of this article without the approval in writing of the commissioner of highways and the Governor. If there be in the funds of the West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing, or improving, such bridge or bridges, the commissioner of highways is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

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§17-17-23. When tolls to cease.

Except as otherwise provided in section thirty-five of this article, when the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, and there are no operating or maintenance expenses outstanding, and any advances made from the state road fund toward the construction, operation and maintenance of such bridge or bridges shall have been repaid, the authority operating such bridge or bridges shall cease the collection of tolls for the use thereof: Provided, That the commissioner may, in his discretion, continue thereafter tolls for a period sufficient to accumulate sufficient funds to pay for major maintenance and repairs foreseeable as being needed on such bridge or bridges in the immediate future: Provided, however, That tolls may be imposed or reimposed on any such bridge or bridges in the manner provided in section twenty-three-b of this article. Thereafter, and as long as the cost of maintaining, repairing and operating such bridge or bridges is being provided for through means other than tolls, no tolls shall be charged for transit thereover and such bridge or bridges shall be free: Provided further, That notwithstanding any other provision of law, if any portion of the cost of construction of a toll bridge is financed, with the aid of federal funds under federal-aid road legislation and the share of the cost of such bridge borne by the state or its subdivisions shall have been repaid from tolls, or a fund sufficient for such repayment shall have been provided or set aside for that purpose, tolls for the use of such bridge shall cease and such bridge shall thereafter be maintained and operated as a free bridge.

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§17-17-23a. Transfer of excess tolls collected.

When the particular bonds issued for any bridge or bridges, and the interest thereon, shall have been paid, or a sufficient amount shall have been provided for the payment thereof and held for that purpose as in this article provided, and there remain in said fund a sum or sums of money accumulated from tolls on such bridge or bridges, such money shall be used first for the conversion of such bridge or bridges from a toll bridge or bridges to a free bridge or bridges; and if, after paying the cost of such conversion there remain any sum or sums in such fund, the same shall, upon the determination in writing by the commissioner to the State Auditor that such conversion has been completed, and that there are no outstanding claims against such bridge or bridges by reason of the same and having been operated as toll bridge or bridges, such remaining sum or sums of money shall be transferred to the state secondary road fund.

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§17-17-23b. Combining of bridges; imposition or reimposition of tolls upon existing combined bridges; revenue bonds and disposition of tolls for combined bridges.

The commissioner is hereby authorized and empowered to combine any two or more bridges, including existing bridges and bridges to be constructed or acquired by purchase, eminent domain or otherwise and to pledge all or any part of the revenue derived from such combined bridges to the payment of interest and sinking fund requirements of any bonds issued in respect of said combined bridges, or either of them, pursuant to this section.

The commissioner is hereby authorized to impose or reimpose tolls or other charges on any existing bridge or bridges which shall be combined, pursuant to this section, with any other bridge, either existing or to be constructed or acquired and the tolls and other charges fixed by the commissioner for the bridges so combined, pursuant to this section, shall be fixed and adjusted in respect to the aggregate of tolls from the bridges so combined, so as to be sufficient to pay all expenses of operating, maintaining and repairing the combined bridges and the interest and sinking fund requirements of any bonds issued in respect of said combined bridges, or either of them, pursuant to this section: Provided, however, That no such tolls or other charges shall be imposed or reimposed on any existing bridge unless the imposition or reimposition thereof shall have, first, been approved by a resolution duly adopted by the council or other governing body of the municipality in which such existing bridge is situate, or, if such existing bridge is not situate within the limits of a municipality, then the imposition or reimposition of such tolls or other charges shall be first approved by an order duly adopted by the county court of the county or counties in which such existing bridge is situate. In either case, a certified copy of the resolution or order shall be filed with the commissioner.

The tolls and other charges from bridges so combined pursuant to this section, for which bonds are issued pursuant to this section, except such part thereof as may be necessary to pay the cost of maintaining, repairing, and operating such bridges during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the state sinking fund commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest and sinking fund requirements, if not used by the sinking fund commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable.

The commission may pay the cost, as hereinbefore in this article defined, of construction or acquisition by purchase, eminent domain or otherwise of any bridge or bridges combined with any other bridge or bridges pursuant to this section and/or the cost of modernization, improvement, repair and reconstruction of any existing bridge so combined with any other bridge or bridges pursuant to this section, including modernization, improvement, repair,

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reconstruction, construction and acquisition of approaches thereto, by the issuance of bridge revenue bonds of the state. Any such bridge revenue bonds shall be issued in the manner and in accordance with the procedure for the issuance of bridge revenue bonds hereinbefore set forth in this article: Provided, however, That nothing in this article shall be construed to permit any combination of an existing toll bridge with any other bridge at any time when there are bonds on such existing toll bridge unpaid or when any such toll bridge bonds, either the principal or interest thereon, are in default.

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§17-17-24. Construction of article in relation to state debt.

Nothing in this article contained shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the Constitution of this state in relation to the state debt.

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§17-17-25. Additional and alternative method provided; permit for construction of competitive bridge.

Sections thirteen to twenty-eight, inclusive, of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplementary and additional to powers conferred by other laws: Provided, however, That no bridge for the use of the traveling public shall hereafter be erected and operated by any public authority authorized by law to construct bridges, or by any person, firm or corporation, across any river or other stream in this state, between any bridge across such river or other stream and any bridge thereover owned by the state and operated as a toll bridge by the state road commissioner, except under a permit of the commissioner in writing, until a certificate of convenience and necessity shall have been granted for the construction and operation thereof by the Public Service Commission. No such certificate of convenience and necessity shall be granted by the Public Service Commission until application in writing shall have been made therefor, and the applicant shall have filed with such application a map showing the location and design of the bridge for the erection and operation of which the certificate of convenience and necessity is sought, and the location of the existing bridges across the river or other stream between which the bridge is proposed to be erected, and the location of all the public roads leading to, and between, the existing bridges for a distance of twenty miles on either side of the river or other stream, and such other information as the Public Service Commission may deem necessary, together with proof that a copy of the application and map was, at least sixty days prior thereto, furnished to the commissioner; nor until the Public Service Commission shall, by investigation and by a hearing had thereon, under such rules as it may prescribe, determine that there is an imperative public need for the erection and operation of such bridge, and that its erection and operation will not materially injure the revenue of any bridge owned by the state and operated by the commissioner as a toll bridge. This proviso shall not apply where any bridge owned by the state and operated by the commissioner as a toll bridge is operated only for the maintenance, repair and operation of such bridge, and not for the purpose of paying any indebtedness against the same.

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§17-17-26. When consent of other officers and boards not required.

It shall not be necessary to secure from any officer or board not named in this article any approval or consent or any certificate or finding, or to hold an election, or to take any proceedings whatever, either for the acquisition or construction of such bridges, or the improvement thereof, or their maintenance, operation or repair, or for the issuance of bonds hereunder, except such as are prescribed by this article or are required by the Constitution of the state.

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§17-17-27. Liberal construction of §§17-17-13 to 17-17-28.

Sections thirteen to twenty-eight, inclusive, of this article, being necessary for the health, welfare and convenience of the citizens of the state, shall be liberally construed to effectuate the purposes thereof.

WV Legislature

§17-17-28. Provisions of §§17-17-13 to 17-17-28 separable.

The provisions and parts of sections thirteen to twenty- eight, inclusive, of this article are separable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions, or parts thereof, are for any reason illegal, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

WV Legislature

§17-17-29. Certain powers, duties, etc., of bridge commission transferred to state road commissioner.

All rights, powers, privileges and functions which are conferred upon or vested in said West Virginia bridge commission by sections fifteen to twenty-eight, inclusive, of the official Code of West Virginia, are hereby transferred to, conferred upon, and vested in the state road commissioner of West Virginia; and the state road commissioner of West Virginia is hereby charged with the performance of all duties, contracts and other obligations imposed upon the said West Virginia bridge commission by said sections fifteen to twenty-eight, inclusive, of said official Code of West Virginia. Wherever the word "commission" is used in sections fifteen to twenty-eight, inclusive, of article seventeen of chapter seventeen of the official Code of West Virginia, or either thereof, or in any amendment thereto, it shall, from and after the time this section becomes effective, mean and refer to the said state road commissioner of West Virginia.

WV Legislature

§17-17-30. Construction, operation, etc., of toll bridges and tunnels by counties and cities -- Authorized; authority to borrow money; consent of federal government and state road commission.

Any incorporated city, in which or adjoining which there is a portion of a navigable or nonnavigable river or stream, either wholly within the State of West Virginia, or partly within the said state, and another state or states, or between the State of West Virginia and any other state, including the Ohio River in this state, from its intersection with the Pennsylvania state line, to the mouth of the Big Sandy River, is hereby authorized and empowered, in its corporate capacity, or through and by means of a bridge commission or other agency to be created or appointed by it, to construct, reconstruct, maintain and operate a highway toll bridge or tunnel, or combination thereof, over or under and across, such river or stream, from such a point within the corporate limits of such city, to such point on the opposite side of such river or stream, either within or without said city, as the said city, through its proper authorities, shall designate and select, for public use in travel, passage and transportation, over or under and across such river or stream, and any such city may also construct, reconstruct, maintain and operate a highway toll tunnel under or through any mountain, hill or embankment, together with any bridges, causeways, fills or other approaches thereto, from a point within the corporate limits of such city to any other point either within or without the corporate limits of such city: Provided, however, That no bridge or tunnel shall be constructed, reconstructed, established or operated, over or under and across any navigable river, or under any mountain, hill or other embankment, without compliance with the requirements, conditions and provisions provided by the Congress of the United States and the laws of the United States, nor without approval of the state road commission of this state; and such city is authorized and empowered to borrow money by means of bonds payable from revenues, or otherwise, and/or to accept grants in part payment therefor from any state or federal governmental agency authorized to make loans, a sum of money sufficient and necessary to pay all costs of construction or reconstruction of such bridge or tunnel, or combination thereof, including approaches thereto, the acquisition of all necessary rights-of- way and all engineering, legal and other expenses necessary thereto or connected therewith, including interest during construction, or reconstruction, as a self-liquidating enterprise or project, within the meaning of the state or federal laws authorizing loans by any such governmental agency. And the county court of any county, in which there is a portion of such river or stream, or on which its county abuts or borders, is likewise authorized and empowered to construct, reconstruct, maintain and operate a highway toll bridge or bridges, or tunnel or tunnels, over or under and across such river or stream, and to construct, reconstruct, maintain and operate a highway toll tunnel under any mountain, hill or other embankment, and to borrow money, as aforesaid, for the construction or reconstruction thereof, in like manner and to the same extent, as such city, and to construct, reconstruct, maintain and operate such bridge or tunnel subject to the same limitations as are hereby imposed in the case of such cities.

Wherever the words "bridge,""toll bridge" or "highway toll bridge" are used in sections thirty-one, thirty-two, thirty-three or thirty-four of this article, or any of the other provisions

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of this article, the same shall be deemed to include bridges or tunnels, or any combinations thereof, together with any causeways, fills, or approaches necessary therefore.

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§17-17-31. Same -- Acquisition of existing bridges.

Any city or county so situated with reference to any river or stream, over and across which there is now a highway bridge, owned and operated by any bridge company or corporation, and situated partly within such city or county, is authorized and empowered to purchase such bridge, with funds obtained in the manner and from the source or sources mentioned by section one of this act, and to own and operate the same, as a self-liquidating enterprise or project; and also to obtain the possession, control and operation of such bridge, under and by a lease or other contract, with the owner or owners thereof, upon such terms and conditions, and for such period of time, as may be agreed upon by such city or county court, and the owner or owners of such bridge.

WV Legislature

§17-17-32. Same -- General powers of cities and counties; bonds generally; exemptions from taxation.

Any city or county court authorized and empowered by this act to construct or purchase and maintain and operate such highway toll bridge, is further authorized and empowered to do and perform any and all acts and make all contracts necessary to effectuate the general purposes of this act, including the acquisition, by original grant, purchase, condemnation or other lawful means, of all necessary permits, franchises, licenses, rights-of-way, easements and other rights in real estate, and title to and possession thereof, and/or to make such purchase, with the money borrowed as provided in section one of this act, or otherwise. Such city or county court shall have authority to make such contracts, agreements and covenants between it and said reconstruction finance corporation, public works administration, or other governmental agency, for the loan of said funds and securing payment thereof, as they may be able to effectuate, subject only to this limitation, that the bonds or other evidences of indebtedness issued or given as security therefore shall be payable solely out of the revenues of such bridge; and to construct, own, operate and maintain such bridge over and across such river or stream, and to make and enter into such contracts, and to do and perform such acts as may be necessary to the construction, and/or purchase, ownership, operation and maintenance of such bridge, subject to such burdens, restrictions and encumbrances as it may be necessary to incur and bear, in securing such funds for construction, including the creation by mortgage or deed of trust, on the said bridge, its equipment, tolls and revenues and franchise, and also subject to the laws of this state and the United States, relating to toll bridges over and across navigable streams, insofar as they are applicable to such bridges. Bonds, or other evidences of indebtedness, issued hereunder, shall be exempt from taxation by the State of West Virginia or any county, district or municipality thereof.

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§17-17-33. Same -- Creation of mortgage lien.

In the event bonds, or other evidences of indebtedness, issued under the provisions of this act are not secured by a mortgage or deed of trust on the bridge acquired from the sale of such bonds, or other evidences of indebtedness, there shall be, and there is hereby, created a statutory mortgage lien upon the bridge and approaches so acquired or constructed from the proceeds of bonds, or other evidences of indebtedness, authorized to be issued, which shall exist in favor of the holder of said bonds, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such bridge and approaches thereto shall remain subject to such statutory mortgage lien until payment in full of the principal and interest of said bonds, or other evidences of indebtedness. Any holder of bonds, or other evidences of indebtedness, issued under the provisions of this act, or of any coupons representing interest accrued thereon, may, either at law or in equity, enforce the statutory mortgage lien hereby conferred, and may, by proper suit, compel the performance of the duties of the officials of the issuing municipality or county court set forth in this act. If there be default in the payment of the principal of and/or interest upon any of said bonds, or other evidences of indebtedness, any court having jurisdiction in any proper action may appoint a receiver to administer said bridge on behalf of the municipality or county court, with power to charge and collect rates sufficient to provide for the payment of said bonds, or other evidences of indebtedness, and interest thereon, and for the payment of the operating expenses and to apply the income and revenues in conformity with this act and the order of ordinance providing for the issuance of said bonds, or other evidence of indebtedness.

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§17-17-34. Same -- Retiring bonds; remittance to sinking fund.

Every municipality or county court issuing bonds, or other evidences of indebtedness, under the provisions of this act, shall thereafter, so long as any such bonds or other evidences of indebtedness remain outstanding, operate and maintain its bridge so as to provide, charge, collect and account for revenues therefrom as will be sufficient to pay all operating costs, provide a depreciation fund, retire the bonds or other evidences of indebtedness, and pay the interest requirements as the same may become due. The ordinance or order pursuant to which any such bonds or other evidences of indebtedness are issued shall pledge the revenues derived from the bridge to the purposes aforesaid, and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts, as and when so set apart into said special fund for the bond requirements, shall be remitted to the West Virginia Municipal Bond Commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this act and the ordinance or order pursuant to which such bonds or other evidences of indebtedness have been issued. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

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§17-17-35. Authorization for municipalities to maintain ownership of and continue charging tolls for toll bridges upon the payment of all bonds issued to acquire and construct or refinance the bridge and the interest thereon; permitted use of tolls collected.

Any municipality which owns and operates a toll bridge as of January 1, 1998, may, at the sole discretion of the municipality, and upon adoption of a resolution to such effect by the council of such municipality and subject to the requirements of section thirty-six of this article, retain ownership of the toll bridge and may establish and retain toll charges for the use thereof after all bonds issued for the acquisition and construction of the bridge, all bonds issued to refinance such bonds and all interest on such bonds have been paid or such payment has been provided for by defeasement or otherwise. All such tolls collected after a municipality determines to maintain ownership of a toll bridge and the bonds issued for the acquisition and construction of such bridge or issued to refinance such bonds and all interest thereon have been paid or such payment has been provided for by defeasement or otherwise, shall be applied first to provide a fund sufficient to pay the cost of maintaining, repairing, operating and demolishing such bridge pursuant to section thirty-six of this article, and thereafter, for any legal purpose of the municipality. Collected tolls remaining after providing for the payment of the cost of maintaining, repairing, operating and demolishing such bridge may be pledged or otherwise encumbered to effectuate any municipal purpose.

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§17-17-36. Maintenance of bridges retained by municipalities after repayment of indebtedness thereon; inspections by commissioner; bridge maintenance fund.

(a) Prior to a municipality retaining ownership of a bridge pursuant to section thirty-five of this article, the municipality shall notify the commissioner in writing of its intent to do so. Upon receipt of such notice, the commissioner shall make an initial inspection of the bridge to determine what repairs, replacements, improvement and additions are necessary to place the bridge in a safe and efficient condition for use of the public, cause an estimate of the cost of such and shall also provide an estimate of the amount of funds required annually to maintain the bridge after completion of initial improvements. The commissioner shall appoint an engineer to inspect the bridge and to consult and assist the commissioner in making findings. The cost of the engineer's service shall be paid by the municipality.

(b) The municipality shall make the improvements to the bridge that are determined to be necessary by the commissioner. The commissioner may make periodic inspections during construction of improvements and at the completion of any improvement project. The commissioner shall report on each inspection to the municipality and include identification of any deficiencies with recommended action to correct the deficiencies. The municipality shall reimburse the commissioner for inspections and reports.

(c) The municipality shall establish a separate fund, designated as the "bridge maintenance fund". Proceeds in the fund shall be expended for the purpose of improvements and maintenance of the bridge in a safe and efficient condition for use by the public. Upon the initial inspection of the bridge by the commissioner pursuant to subsection (a) of this section, the municipality shall deposit in the fund an amount equal to the estimate of the commissioner for the costs of the initial improvements to the bridge made pursuant to subsection (a) of this section. Upon completion of the initial improvements, the municipality shall maintain an adequate balance of moneys in the fund sufficient to maintain the bridge annually, as determined by the commissioner pursuant to subsection (a) of this section.

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§17-17-37. Transfer of toll bridge to county.

Notwithstanding any provision of this code to the contrary, in the event the municipality which owns and operates a toll bridge does not retain ownership of the bridge under the provisions of section thirty-five of this article, the county commission of the county in which the municipality is located has the option to take over the ownership and operation of the bridge. The commissioner of the Division of Highways shall notify the county commission in writing when the opportunity to exercise the option exists. The county commission has ninety days from receipt of the notification to exercise its option. If the county commission decides to assume the ownership and control of the bridge, it shall comply with all applicable provisions of this article that are imposed on a municipality that chooses to retain ownership of a toll bridge.

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§17-17-38. Municipal sale of ownership of toll bridges to private toll transportation facility; maintenance of tolls; imposition of liability for collection and payment; tax treatment and divestment.

(a) *Sale of municipally owned toll bridge*. — Any municipality which owns and operates a toll bridge pursuant to this article may, at the sole discretion of the municipality, and upon adoption of a resolution to such effect by the council of such municipality, sell and convey such toll bridge to a private toll transportation facility subject to such terms and conditions as the council of such municipality may agree.

(b) *Privilege to maintain tolls*. — Any private toll transportation facility purchasing a municipally-owned toll bridge located fewer than five miles from a toll-free bridge which crosses the same body of water or obstacle pursuant to subsection (a) of this section may retain, modify, and collect any such toll charges for the use thereof on persons and things passing over any such bridge as the facility may, by resolution, from time to time prescribe.

(c) *Electronic collection of tolls and imposition of liability for payment.* — The collection and enforcement of tolls for the use of any such bridge may be accomplished by electronic toll collection in the same manner and procedures as provided in §17-16D-1 *et seq.* of this code, and the imposition of liability for payment of such tolls shall apply as set forth specifically in §17-16D-5, §17-16D-6, §17-16D-7, and §17-16D-10 of this code: Provided, That the toll rates provided for in §17-17-9 of this code shall not apply to a private toll transportation facility.

(d) *Nonrenewal of vehicle registration.* — If an owner of a vehicle has received at least one invoice from a private toll transportation facility for any unpaid tolls and has: (1) failed to pay the unpaid tolls and administrative fees, and (2) failed to file a notice to contest liability for a toll violation as provided for in the invoice, then the private toll transportation facility may notify the Commissioner of the Division of Motor Vehicles, who shall, if no form contesting liability has been timely filed with the private toll transportation facility, refuse to register or renew the registration of any vehicle of which the person committing the violation is a registered owner or co-owner until such time as the private toll transportation facility has notified the commissioner that such fees and unpaid tolls have been paid or satisfied.

(e) *Tax treatment of municipally owned toll bridge sold to private toll transportation facility.* — A municipally owned toll bridge sold to a private transportation facility pursuant to this section shall be considered exempt for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code: *Provided*, That if said exemption is in any way held to be invalid, then the value of a municipally owned toll bridge purchased by a private toll transportation facility, for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code, shall in no event be valued at more than its salvage value, which for purposes of this article is the lower of fair market salvage value or five percent of the original cost of the property.

(f) *Divestment of private toll bridge*. — Nothing in this section shall be construed to limit or prevent the subsequent sale, lease, assignment, or transfer of a municipally-owned toll

bridge purchased by a private toll transportation facility, provided that all other requirements of this section are met.

(g) *Definitions*. — For purposes of this section, the term "private toll transportation facility" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity engaged in the collecting or charging of tolls on a previously municipal-owned toll bridge pursuant to this article.

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