WEST VIRGINIA CODE CHAPTER 17 ARTICLE 17A

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§17-17A-1. Purpose and scope.

This article is intended to facilitate the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road to be funded wholly or in part by amounts to be made available pursuant to the Federal Surface Transportation Assistance Act of one thousand nine hundred eighty-two, or from amounts to be made available pursuant to any other federal legislation, or from amounts specifically appropriated or dedicated therefor by the state, or from amounts which may be properly expended from the State Road Fund under article three, chapter seventeen of this code. This article authorizes notes, in an aggregate amount of outstanding notes not to exceed $500 million, to be issued to provide financing for such projects in anticipation of reimbursement from such sources, but such notes will be special obligations of the state only, and will not be general obligations of the state or secured by any claim on the general credit or taxing powers of the state.

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§17-17A-2. Definitions.

As used in this article, the following words and terms shall have the following meaning:

"Commissioner" means the West Virginia commissioner of highways.

"Cost," when used with respect to any surface transportation improvement, means any and all costs of acquiring, constructing, reconstructing, replacing, completing or repairing any surface transportation improvement, including without limiting the generality of the foregoing, land, property, rights, franchises, materials, labor and services, contractors' fees, planning and engineering expenses, financing costs, legal fees, trustees' or paying agents' fees and interest on obligations issued under this article.

"Note" means any note or other obligation issued pursuant to this article.

"Outstanding note" means a note which has been issued pursuant to this article and has not been repaid, but does not include notes which are to be paid from designated moneys or securities which are irrevocably held in trust solely for such purpose.

"Surface transportation improvement" means any interstate or other highway, secondary road, bridge and toll road construction, reconstruction, improvement or repair, as to which all or a portion of the cost thereof is to be reimbursed to the state under federal legislation.

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§17-17A-3. Authorization of notes.

The commissioner is hereby authorized to pay the cost of any surface transportation improvement through the issuance of special obligation notes. No such notes may be issued, however, unless they are part of an issue described in a written declaration executed by the Governor and the commissioner and filed in the office of the Secretary of State.

Except in the case of renewal notes, the proceeds of such notes shall be used solely for the payment of the cost of the surface transportation improvements which they were issued to finance, which shall be verified by the commissioner and under such further restrictions, if any, as may be provided. If the proceeds of such notes, by error or calculation or otherwise, shall be less than the cost of the related surface transportation improvements, additional notes may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same sources, without preference or priority of the notes first issued for the same related surface transportation improvements. If the proceeds of notes issued for any related surface transportation improvements shall exceed the cost thereof, the surplus shall be applied to the payment, purchase or redemption of such notes.

Such notes shall be executed by the Governor and the commissioner, under the great seal of the state, attested by the facsimile signature of the Secretary of State, and the coupons, if any, attached thereto shall be authenticated by the facsimile signature of the commissioner. The Governor and the commissioner may execute such notes by their facsimile signatures, but, unless provision has been made for the authentication thereof by a trustee determined to be responsible by the commissioner, each note shall bear at least one manual signature.

Prior to the preparation of definitive notes, the Governor and the commissioner may under like restrictions issue temporary notes with or without coupons, exchangeable for definitive notes upon the issuance of the latter. Such notes 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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§17-17A-4. Establishment of terms and sale of notes; financial advisor.

The description contained in any declaration with respect to an issue of notes hereunder shall specify the particular surface transportation improvements to be financed through the issuance of the notes, the estimate of the cost of such improvements, the aggregate amount of outstanding notes which may at any point in time constitute a part of such issue, the time or times and manner of sale of such notes, and the particular terms of such notes, or the manner in which such terms will be determined, including the date or dates, time or times of issuance, time or times and amount or amounts of maturity or maturities, specified or variable rate or rates of interest, the form of such notes and provisions for registration or exchange, if applicable, the method and manner of payment of such notes, the provisions, if any, for redemption or renewal of such notes, and specifying such other similar matters as the commissioner may determine to be necessary and appropriate in connection with the sale and issuance of the notes.

The notes of an issue described in any such declaration shall be sold in such manner, at such price or prices and on such terms and conditions as no less than three members of the five-member group, comprised of the treasurer, the Auditor, the commissioner of finance and administration, the Tax Commissioner and the commissioner, determines to be in the best interest of the state, taking into account the financial responsibility of the purchaser and the terms and conditions of purchase and especially the availability of the proceeds of the notes when needed to pay the cost of the related surface transportation improvements. Such five-member group shall serve as financial advisor and upon the determination of no less than three members, as aforesaid, may retain professional financial assistance for such purpose.

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§17-17A-5. Security for notes; trust agreements.

In connection with any issue of notes hereunder, the commissioner may pledge or assign, as security for the payment of the principal of or interest on such notes, any of the following:

(a) Any amounts to be received from the United States of America, or any agency or instrumentality thereof, as reimbursements of the costs incurred in connection with the surface transportation improvements to be financed by such notes, together with the rights and interests of the state with respect to such reimbursement;

(b) Any amounts in the state road fund which may properly be applied to the reimbursements of any such costs pursuant to article three of this chapter;

(c) The proceeds of any such notes pending their use or of notes which may be issued to renew or refund such notes;

(d) The proceeds of any insurance or letters of credit or similar arrangements undertaken in connection with the acquisition, construction or financing of such surface transportation improvements;

(e) The proceeds of any tolls, or portions of tolls, charged and collected pursuant to the provisions of sections five-a and five-b of this article that are designated by the commissioner as security for the payment of the principal of or interest on notes issued for the purposes described in section five-a of this article; and

(f) Any other amounts specifically designated for the purpose of paying any such costs, but only to the extent appropriated by the Legislature and paid from general revenues prior to such pledge or dedicated for such purpose by the Legislature from proprietary revenues of the state.

Any such pledge or assignment shall be valid and binding from the time it is made, and the lien of such pledge or assignment shall be enforceable and need not be perfected by delivery or any filing or further act. Such lien shall be valid against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge or assignment.

The commissioner may enter into an agreement or agreements with any trust company or with any bank having the power of a trust company, either within or outside of the state, as trustee for the holders of notes issued hereunder, setting forth therein such duties of the state and of the commissioner in respect of the acquisition and construction of surface transportation improvements, 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 notes, as may be agreed upon with the original purchasers of such notes, and including therein provisions restricting the individual right of action of holders as is customary in such trust agreements to protect and enforce the rights and remedies of the

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trustee and the holders. All expenses incurred in carrying out such agreement may be treated as a part of the cost of construction of the surface transportation improvements affected by the agreement.

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§17-17A-5a. Use of tolls for construction, maintenance, repair and operating costs; use of tolls to pay special obligation notes.

For highway projects described in section five-b of this article that are constructed after May 1, 1999, the commissioner of highways is hereby authorized to fix, revise, charge and collect tolls for transit over the highway projects and the different parts or sections thereof. The tolls shall be fixed and adjusted so that the aggregate of tolls from the project or projects provide a fund sufficient with other revenues, if any, to pay: (1) The cost of constructing, maintaining, repairing and operating such project or projects; and (2) the principal of and the interest on any notes issued to finance the project or projects as the same shall become due and payable, and to create reserves for such purposes. The tolls shall not be subject to supervision or regulation by any other commission, board, bureau, department or agency of the state. The tolls, except such part thereof as may be necessary to pay such cost of construction, maintenance, repair and operation and to provide such reserves therefor as may be provided for in the notes or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in the notes or the trust agreement in a sinking fund which is hereby pledged to, and charged with the payment of: (1) The interest upon such notes as such interest shall fall due; (2) the principal of such notes as the same shall fall due; (3) the necessary charges of paying agents for paying principal and interest; and (4) the redemption price or the purchase price of notes retired by accelerated payment or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the notes or of the trust agreement. The moneys in the sinking fund, less such reserve as may be provided for in the notes or trust agreement, if not used within a reasonable time for the purchase of notes for cancellation as above provided, shall be applied to the redemption of the notes at the redemption price then applicable.

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§17-17A-5b. Designation of class of toll roads.

(a) The commissioner may fix and charge tolls on any road which meets the following criteria:

(1) The road is a fully controlled access, four lane highway; and

(2) The road extends from the border of West Virginia and is a continuation of a fully controlled access four lane highway in the adjacent state; and

(3) The adjacent state charges tolls on its portion of the highway immediately adjacent to West Virginia; and

(4) The West Virginia portion of the highway connects to another fully controlled access four lane highway in West Virginia.

(b) Not less than one hundred eighty days prior to the final decision of the commissioner to charge tolls on any road described in subsection (a) of this section, the commissioner shall provide a report to the Joint Committee on Government and Finance setting forth:

(1) The location and a description of the road;

(2) The provisions of any special obligation notes intended by the commissioner to be secured, in whole or in part, by tolls charged on the road and any related trust agreements;

(3) The anticipated amount of tolls to be charged and the duration of time the commissioner expects tolls to be charged on the road; and

(4) Such other information that may be required by the Joint Committee on Government and Finance.

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§17-17A-6. Rights of holders; limitation on liability of state.

The state of West Virginia does hereby pledge to and agree with the holders of any notes issued under this article that the state will not limit or alter the rights hereby vested in the commissioner to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The commissioner is hereby authorized to include this pledge and agreement of the state in any agreement with the holders of such notes.

The holder of any note, or the trustee therefor, shall have the right to bring suit for the payment of such note or to compel the enforcement of any agreement securing such note to the extent therein provided. Such notes shall be special obligations of the state, payable solely from the sources herein provided, and shall not be a general obligation debt or liability of the state or constitute any claim on its general revenues or taxing power. Neither the commissioner nor any other officer of the state executing notes or other agreements hereunder shall have any personal liability thereon or be subject to personal accountability therefor.

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§17-17A-7. Legality for investment; tax exemption.

The notes are hereby made securities in which all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, and other persons, except administrators, guardians, executors, trustees and fiduciaries, who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them.

The notes and the income therefrom shall at all times be exempt from taxation, except for death and gift taxes, taxes on transfers, sales taxes, real property taxes and business and occupation taxes.

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§17-17A-8.

Repealed.

Acts, 1985 Reg. Sess., Ch. 152.

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