WEST VIRGINIA CODE CHAPTER 17 ARTICLE 3A

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§17-3A-1. Industrial Access Road Fund created; construction guarantees by municipalities and counties.

(a) Any other provision of this code notwithstanding, there is hereby continued in the State Treasury the Industrial Access Road Fund, referred to in this article as "the fund". There shall be deposited into the fund three fourths of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the State Road Fund or the percentage of those tax collections that will produce $3 million for each fiscal year: *Provided*, That the Commissioner of Highways may transfer an additional amount up to $3 million from the State Road Fund in any fiscal year when he or she determines this additional amount would be a prudent investment in additional industrial access roads that could not be funded out of the fund without additional moneys being available. At the end of each fiscal year, all unobligated moneys in the fund revert to the State Road Fund.

(b) The moneys in the fund shall be expended by the Division of Highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, distribution, processing, or other economic development activities, including publicly owned airports, are already constructed, are under firm contract to be constructed, or an approved industrial development site as part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code. The moneys in the fund shall also be used for signage, signalization, safety-related upgrades, and other improvements directly tied to an approved industrial access road fund project. In the event there is no industrial site already constructed, or for which the construction is under firm contract, or an approved industrial development site as part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, a county or municipality may guarantee to the Division of Highways an acceptable surety or a device in an amount equal to the estimated cost of the access road or that portion provided by the Division of Highways, that an industrial site will be constructed and if no industrial site acceptable to the Division of Highways is constructed within the time limits of the surety or device, the surety or device shall be forfeited: *Provided*, That any grant previously awarded prior to being approved as a part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, and has not yet expended all of the grant award shall not have surety to the Division of Highways.

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§17-3A-2. Division of highways to determine construction of industrial access roads.

In determining whether or not to construct or improve any industrial access road and in determining the nature of the road to be constructed, the Division of Highways shall base its decision on the costs of the industrial access road in relation to the volume and nature of the traffic to be generated as a result of developing the industrial site within the total industrial area. In making a decision on any industrial site, the total volume of traffic to be generated shall be considered in regard to the overall cost of the project. The Division of Highways shall consult and work in cooperation with the West Virginia Division of Economic Development in determining the use of industrial access road funds.

Prior to a formal request for the use of moneys from the fund to provide access to new or expanding industrial sites, the location of the industrial access road shall be submitted for approval of the Division of Highways. The Division of Highways shall consider the cost of the industrial access road as it relates to the project's location and as it relates to the possibility of future extensions of the road to serve other possible industrial sites as well as the future development of the surrounding area. The Division of Highways shall approve, reject, or provide comments relating to the location of the Industrial Access Road within 90 days of the date of submission of the request.

Prior to the allocation of moneys from the fund for the construction or maintenance of an industrial access road to an industry proposing to locate or expand in a county or municipality, the governing body of the county or municipality shall, by resolution, request moneys from the fund and shall be responsible for the preliminary negotiations with the industries and other interested parties. The Division of Highways shall be available for consultation with the governing bodies of the counties or municipalities and other interested parties and may prepare surveys, plans, engineering studies, and cost estimates for the proposed industrial access road.

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§17-3A-3. Industrial access roads to be part of state road system.

Any industrial access road constructed under this article is a state local service road in the state road system and shall thereafter be maintained in accordance with the provisions of this chapter.

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§17-3A-4. Restrictions on use of fund.

(a) The fund may not be used for the adjustment of utilities or for the construction of industrial access roads to schools, hospitals, libraries, armories, shopping centers, apartment buildings, government installations, or similar facilities, whether public or private. The fund may not be used to construct industrial access roads on private property.

(b) Moneys from the fund may not be expended until the governing body of the county or municipality certifies to the Division of Highways that the industrial site is constructed and operating, or is under firm contract to be constructed or operated, or is an approved industrial development site as part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, or upon the presentation of an acceptable surety or device in an amount equal to the estimated cost of the access road or that portion provided by the Division of Highways in accordance with §17-3A-1.

(c) Not more than $800,000 of unmatched moneys from the fund may be allocated for use in any one county or municipality in any fiscal year. The amount of unmatched funds allocated may be supplemented with additional matched moneys from the fund, in which case the matched moneys allocated from the fund may not exceed $300,000, to be matched equally from sources other than the fund.

(d) Funds may only be allocated to those items of construction and engineering which are essential to providing an adequate facility to serve the anticipated traffic. Funds may not be allocated for items such as storm sewers, curbs, gutters, and extra pavement width unless necessary to extend or connect an existing access road

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§17-3A-5. Disbursements from fund.

Any claim of a contractor or others, not otherwise provided for, for labor done or for materials, services or supplies furnished to the Division of Highways pursuant to the provisions of this article shall be audited by the commissioner of the Division of Highways. If the commissioner determines that the claim is valid and correct, the commissioner shall issue a requisition of the division upon the State Auditor therefor showing the nature of the claim and specifying whether the claim is for labor done or materials, services or supplies furnished for the construction or maintenance of state roads, or for other purposes, and the Auditor shall issue his or her warrant upon the State Treasurer therefor. The treasurer shall issue the warrant to the person, firm or corporation entitled thereto out of the funds in the treasury provided for that purpose. The cost of acquiring a right-of-way shall be paid out of the fund.

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§17-3A-6. Annual audit to be made of receipts and expenditures of fund.

The Legislature, acting through the Joint Committee on Government and Finance, shall cause an annual audit to be made by a resident independent certified public accountant of all books, accounts and records relating to all receipts and expenditures of the fund. The commissioner shall make available to the independent Auditor or Auditors performing the audit all of the division's books, accounts and records pertaining to all moneys received and expended. The Auditor or Auditors performing the audit shall make available annually the audit report with copies thereof to the members of the Legislature, the Governor, the commissioner of the Division of Highways, the Secretary of State, the State Treasurer, the Attorney General and the State Auditor. The audit report shall be available to the public in the office of the Secretary of State.

The Legislature, acting through the Joint Committee on Government and Finance, shall obtain the services of a resident independent certified public accountant for this purpose, the cost of which shall be payable out of funds appropriated by the Legislature. Any audits of the funds which have been made by any official auditing agency of the United States government shall be accepted in lieu of the state audit.

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