# WEST VIRGINIA CODE CHAPTER 21a ARTICLE 8A

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**§21A-8A-1. Commissioner of department of employment security authorized to borrow money to repay funds advanced by the federal government; employment security debt fund established.**

(a) For the single purpose of financing the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321, for such advances which were made prior to July 1, 1987, the commissioner of the department of employment security is authorized on behalf of the department of employment security, as provided in this article:

(1) To borrow money, as contractual indebtedness, not bonded, and issue notes as evidence of such borrowing; and

(2) To borrow money and issue revenue bonds as evidence of such borrowing.

(b) Regardless of whether the repayment of funds advanced by the federal government is to be accomplished solely by issuing notes in accordance with the provisions of subdivision (1), subsection (a) of this section, solely by the issuance of bonds in accordance with the provisions of subdivision (2) of such subsection, or by a combination of such notes and bonds, the commissioner shall provide for the issuance of such notes or bonds in such principal amounts and upon such terms as shall be necessary to provide sufficient money for repaying, in whole, such funds advanced by the federal government.

(c) The commissioner may borrow money as provided for in subdivision (1), subsection (a) of this section, from the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, or may borrow money from any private financial institution or institutions, or may borrow from both such funds and such institution or institutions, or may borrow money as provided for in subdivision (2), subsection (a) of this section, by issuing revenue bonds. Prior to financing the repayment of funds advanced by the federal government, the commissioner shall ascertain which option or combination of options presents the terms most economically favorable to the commissioner and the employers and employees of this state, and shall proceed to refinance the repayment in accordance with such terms.

(d) The principal of and interest on such bonds and notes shall be payable solely from the special nonrevolving funds created under the provisions of section two of this article.

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## §21A-8A-2. Employment security debt note fund created; employment security debt bond fund created; pledge of funds for sinking fund.

(a) There is hereby created in the State Treasury a special nonrevolving revenue fund to be known as "the employment security debt note fund," into which shall be paid a portion of all funds derived from the assessments hereinafter set forth in this article. The portion of such assessments payable to the fund shall be an amount directly proportional to the ratio which the principal and interest on notes issued under this article bears to the total amount of principal and interest to be paid on indebtedness incurred under the provisions of this article. This fund may also receive funds from any other source, either state or federal.

(b) There is hereby created in the State Treasury a special nonrevolving revenue fund to be known as "the employment security debt bond fund," into which shall be paid a portion of all funds derived from the assessments hereinafter set forth in this article. The portion of such assessments payable to the fund shall be an amount directly proportional to the ratio which the principal and interest on bonds issued under this article bears to the total amount of principal and interest to be paid on indebtedness incurred under the provisions of this article. This fund may also receive funds from any other source, either state or federal.

(c) The commissioner shall have authority to pledge all of the revenue paid into a fund created by this section to meet the requirements of any sinking fund established pursuant to section five of this article in connection with any revenue bond issue or notes authorized by this article, including a reserve fund for the payment of the principal of and interest on such revenue bond issue or notes when other moneys in the sinking fund are insufficient therefor; and may provide in the resolution authorizing any issue of such bonds or notes, and in any trust agreement made in connection therewith, for such priorities on the revenues paid into the special revenue fund as may be necessary for the protection of the prior rights of the holders of bonds or notes issued at different times under the provisions of this article.

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## §21A-8A-3. Issuance of revenue bonds or notes.

The issuance of bonds or notes under the provisions of this article shall be authorized by a resolution of the commissioner, which shall provide for the issuance of bonds or notes in an amount sufficient to provide moneys sufficient to repay the federal government for all advances and interest thereon made to the West Virginia department of employment security pursuant to Title 42 U.S.C.A. §1321, which such advances were made prior to July 1, 1987: Provided, That competitive sealed bids shall be used to determine the bond issuance agent. Such resolution shall prescribe the rights and duties of the bondholders or noteholders and the commissioner, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds or notes shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be payable at such times and intervals, be in such denominations, be in such form, either coupon or fully registered without coupons, or book entry, carrying such registration exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of such redemption prices, and be entitled to such priorities on the revenues paid into the special revenue fund as may be provided in the resolution authorizing the issuance of the bonds or notes or in any trust agreement made in connection therewith. The bonds or notes shall be signed by the Governor and by the commissioner, under the great seal of the state, attested by the Secretary of State, and the coupons attached thereto, if any, shall bear the facsimile signature of the commissioner. In case any of the officers whose signatures appear on the bonds or notes or coupons 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 such officers had remained in office until such delivery.

Such bonds or notes shall be sold in such manner as the commissioner may determine to be for the best interests of the state, taking into consideration the financial responsibility of the purchaser. The proceeds of such bonds or notes shall be used solely for the repayment of advances and interest under the provisions of Title 42 U.S.C.A. §1321.

The bonds or notes issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the law merchant and the Uniform Commercial Code of this state.

Bonds or notes issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of the State of West Virginia and for business development corporations organized pursuant to article fourteen, chapter thirty-one of the Code of West Virginia.

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## §21A-8A-4. Trust agreement for holders of bonds or notes.

The 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 the state, as trustee for the holders of bonds or notes issued hereunder, setting forth therein such duties of the commissioner in respect to the payment of the bonds or notes, the conservation and application of all moneys, the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds or notes, as may be agreed upon with the original purchasers of such bonds or notes, except that competitive bids shall be used to determine such trust company; and including therein provisions restricting the individual right of action of bondholders or noteholders as is customary in trust agreements respecting bonds or notes and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders or noteholders.

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## §21A-8A-5. Municipal bond commission for payment of bonds or notes.

From the special revenue funds established in accordance with the provisions of section two of this article, the commissioner shall make periodic payments to the state Municipal Bond Commission in an amount sufficient to meet the requirements of any issue of bonds or notes sold under the provisions of this article, as specified in the resolution of the commissioner authorizing the issue and in any trust agreement entered into in connection therewith. The payment so made shall be placed by the commissioner in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds or notes of such issue and the interest thereon, and to the redemption or repurchase of such bonds or notes, such sinking fund to be a fund for all bonds or notes of such issue without distinction or priority of one over another. The moneys in the special sinking fund, less such reserve for payment of principal and interest as may be required by the resolution of the commissioner authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds or notes payable from such fund which by their terms are then redeemable, or for the purchase of bonds or notes at the market price; but not exceeding the price, if any, at which such bonds or notes shall in the same year be redeemable; and all bonds or notes redeemed or purchased shall forthwith be canceled and shall not again be issued.

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## §21A-8A-6. Credit of state not pledged.

No provisions of this article shall be construed to authorize the commissioner at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the commissioner under the authority herein granted be deemed to be obligations of the state.

The bonds and notes authorized hereby shall contain on their face a statement to the effect that: (1) Neither the State of West Virginia nor any agency, political corporation or political subdivision of the State of West Virginia is obligated to pay the principal of or interest on the bonds or notes except as provided in this article; and (2) neither the faith and credit nor the taxing power of the State of West Virginia or any agency, political corporation or political subdivision of the State of West Virginia is pledged to the payment of the principal of or interest on the bonds or notes except as provided by this article.

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## §21A-8A-7. Bonds or notes exempt from taxation.

All bonds or notes issued by the commissioner under the provisions of this article and the income therefrom shall be exempt from taxation by the State of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

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**§21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.**

(a) On and after July 1, 1987, every employer, contributing and reimbursable, subject to this chapter, shall be required to withhold from all persons in his employment an assessment which shall be in an amount not to exceed thirty-five one hundredths (35/100) of one percent of said employee's gross wages, which amount, together with an assessment contributed by the employer in an amount as determined in accordance with the provisions of subsection (b) of this section, except for reimbursable employers who shall not be assessed, shall be paid to the division of employment security on a form prescribed by the commissioner, at the same time and under the same conditions as the quarterly contribution payments required under the provisions of section seven, article five, chapter twenty-one-a of this code. The commissioner shall have the right to collect any delinquent assessments under this section in the same manner as provided for in section sixteen, article five, chapter twenty-one-a of this code; and in addition, any delinquency hereunder shall bear interest as set forth in section seventeen, article five, chapter twenty-one-a of this code.

(b) The commissioner shall establish the exact amounts of the employers' and employees' assessments at a level sufficient to generate the revenues needed to retire the bonds or notes issued pursuant to this article and to pay deferred interest owed to the federal government when due, subject only to the limitation established in the preceding subsection (a) of this section. After determining the level of assessment on the gross wages of employees, the commissioner shall determine a rate of assessment to be imposed upon employers, except reimbursable employers, which rate shall be expressed as a percentage of wages, as defined in section three, article one of this chapter, except that for purposes of this section such wages shall include all of that part of the remuneration paid to an employee that is less than $21,000 during any calendar year, and which is sufficient to cause the total statewide assessment on such employers to equal the total statewide assessment imposed upon employees.

(c) The proceeds derived from the assessments provided for in this section shall be placed in the special nonrevolving revenue funds established pursuant to the provisions of section two of this article to be held by the commissioner separate and apart from all other funds and accounts created under this chapter and the funds, together with the interest derived therefrom, shall be pledged and utilized only for the repayment of bonds or notes issued under the provisions of this article and the payment of deferred interest owed to the federal government as the same becomes due. At such time as there are no longer any bonds, notes or other evidences of indebtedness outstanding which are payable from the special nonrevolving revenue funds, any remaining balance in these special accounts shall be paid into the unemployment compensation trust fund. The commissioner may establish additional special accounts and subaccounts with the employment security administration fund for the purpose of identifying more precisely the sources of payments into and disbursements from the employment security administration fund.

(d) Prior to the beginning of any quarter during which bonds or notes authorized by this



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article will be outstanding, the commissioner may adjust the amount of the assessment set forth in subsection (a) of this section; however, the amount is never to exceed thirty-five one hundredths (35/100) of one percent of each said employee's gross wages. The assessment shall cease when all the bonds or notes are repaid.

(e) Any employer or corporate officer if employer is a corporation, who fails to remit to the division of employment security the assessments provided for under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than $5,000 nor more than $10,000, or by imprisonment of not less than one year, or both.

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## §21A-8A-9. West Virginia Board of Investments to act as Board of Investments for purposes of this article; powers.

The West Virginia state Board of Investments as heretofore created and constituted under the provisions of article six, chapter twelve of this code, shall be ex officio a Board of Investments for funds of the special investment funds designated as the consolidated fund and the consolidated pension fund as they are made available for investment in accordance with the provisions of this article, and as such, the Board of Investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six of chapter twelve in carrying out the duties assigned to it under the provisions of this article.

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## §21A-8A-10. Authority of the Board of Investments.

Upon application by the commissioner of the department of employment security, the Board of Investments shall invest moneys, securities, and other assets of the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, in the form of interest-bearing loans to the department of employment security to finance the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321. Such loan shall be made, if at the time of the commitment to make the loan, the Board of Investments determines that there exists a plan for the repayment of such loan which is satisfactory to the Board of Investments and which can be carried out by the department of employment security, that the loan is needed to assist the department of employment security to repay advances made from the federal unemployment account in the unemployment trust fund in accordance with the provisions of Title 42 U.S.C.A. §1321. The board shall also determine that all of the proceeds of a loan made under the provisions of this article will be used to repay advances made to the department of employment security from the federal unemployment account in the unemployment trust fund in accordance with the provisions of Title 42 U.S.C.A. §1321, which advances were made prior to July 1, 1987. Any loss to the principal of the consolidated fund or the consolidated pension fund that occurs because of any loan authorized by this article shall be deducted only from the state government moneys in such funds.

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## §21A-8A-11. Requirements of loan.

(a) A loan made by the Board of Investments from the consolidated fund or the consolidated pension fund under the provisions of this article will bear interest at a rate determined by the Board of Investments not to exceed seven percent per annum. At the discretion of the Board of Investments, a loan made under the provisions of this article may be renewed if prevailing economic and financial conditions in the marketplace would permit such renewal to be prudently made: Provided, That any such renewal notes shall not be issued by the commissioner which would mature after the date on which the original notes would have otherwise matured.

(b) The date of maturity of notes issued by the commissioner shall, in all cases, be determined by the Board of Investments, consistent with its fiduciary responsibilities.

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## §21A-8A-12. Limitations on loan authority.

The authority of the Board of Investments to make loans under the provisions of this article shall not at any time exceed $260 million in the aggregate principal amount outstanding.

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## §21A-8A-13. Reports to the Legislature.

The Board of Investments shall submit to the Legislature annually a full report of its activities under this article so long as any loan made by the board under the provisions of this article is outstanding.

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## §21A-8A-14. Termination.

The authority of the Board of Investments to make loans under this article expires on December 31, 1987.

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