WEST VIRGINIA CODE CHAPTER 7 ARTICLE 20

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§7-20-1. Short title.

This article shall be known as the "Local Powers Act."

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§7-20-2. Purpose and findings.

(a) It is the purpose of this article to provide for the fair distribution of costs for county development by authorizing the assessment and collection of fees to offset the cost of commercial and residential development within affected counties.

(b) The Legislature hereby makes the following findings:

(1) The residents, taxpayers and users of county facilities and services, in affected counties, have contributed significant funds in the form of taxes and user charges toward the cost of existing county facilities and services, which represent a substantial and incalculable investment;

(2) Affected counties in West Virginia are experiencing an increased demand for development which is causing strain on tax revenues and user charges at existing levels and impairing the ability of taxpayers, residents and users to bear the cost of increased demand for county facilities and services. In some instances, county borrowing has been required to meet the demand;

(3) Equitable considerations require that future residents and users of existing county facilities and services contribute toward the investment already made in those facilities and services;

(4) Sound fiscal policy in the efficient administration of county government requires that the imposition of taxes and user charges be commensurate to the actual yearly cost of county facilities and services;

(5) Accumulations of large financial reserves for future capital expenditures unjustly exact unneeded current funds from taxpayers and users; and

(6) County borrowing unnecessarily increases the cost of government by the amount of debt service and should be avoided unless considered absolutely necessary to meet an existing public need.

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§7-20-3. Definitions.

(a) "Capital improvements" means the following public facilities or assets that are owned, supported or established by county government:

(1) Water treatment and distribution facilities;

(2) Wastewater treatment and disposal facilities;

(3) Sanitary sewers;

(4) Storm water, drainage, and flood control facilities;

(5) Public primary and secondary school facilities;

(6) Public road systems and rights-of-way;

(7) Parks and recreational facilities; and

(8) Police, emergency medical, rescue, and fire protection facilities.

"Capital improvements" as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. "Capital improvement" does not include costs associated with the operation, repair, maintenance, or full replacement of capital improvements. "Capital improvement" does include reasonable costs for planning, design, engineering, land acquisition, and other costs directly associated with the capital improvements described herein.

(b) "County services" means the following: (1) Services provided by administration and administrative personnel, law enforcement and its support personnel; (2) street light service; (3) firefighting service; (4) ambulance service; (5) fire hydrant service; (6) roadway maintenance and other services provided by roadway maintenance personnel; (7) public utility systems and services provided by public utility systems personnel, water; and (8) all other direct and indirect county services authorized by this code.

(c) "Direct county services" means those public services authorized and provided by various county agencies or departments.

(d) "Indirect county services" means those public services authorized and provided by commissioned agents, agencies or departments of the county.

(e) "Growth county" means any county within the state with an averaged population growth rate in excess of one percent per year as determined from the most recent decennial census counts and forecasted, within decennial census count years, by official records of government or generally approved standard statistical estimate procedures: Provided, That

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once "growth county" status is achieved it is permanent in nature and the powers derived hereby are continued.

(f) "User" means any member of the public who uses or may have occasion to use county facilities and services as defined herein.

(g) "Impact fees" means any charge, fee, or assessment levied as a condition of the following: (1) Issuance of a subdivision or site plan approval; (2) issuance of a building permit; and (3) approval of a certificate of occupancy, or other development or construction approval when any portion of the revenues collected is intended to fund any portion of the costs of capital improvements for any public facilities or county services not otherwise permitted by law. An impact fee does not include charges for remodeling, rehabilitation, or other improvements to an existing structure or rebuilding a damaged structure, provided there is no increase in gross floor area or in the number of dwelling units that result therefrom.

(h) "Proportionate share" means the cost of capital improvements that are reasonably attributed to new development less any credits or offsets for construction or dedication of land or capital improvements, past or future payments made or reasonably anticipated to be made by new development in the form of user fees, debt service payments, taxes or other payments toward capital improvement costs.

(i) "Reasonable benefit" means a benefit received from the provision of a capital improvement greater than that received by the general public located within the county wherein an impact fee is being imposed.

(j) "Plan" means a county, comprehensive, general, master or other land use plan as described herein.

(k) "Program" means the capital improvements program described herein.

(l) "Unincorporated area" and "total unincorporated area" means all lands and resident estates of a county that are not included within the corporate, annexed areas or legal service areas of an incorporated or chartered municipality, city, town or village located in the State of West Virginia.

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§7-20-4. Counties authorized to collect fees.

County governments affected by the construction of new development projects are hereby authorized to require the payment of fees for any new development projects constructed therein in the event any costs associated with capital improvements or the provision of other services are attributable to such project. Such fees shall not exceed a proportionate share of such costs required to accommodate any such new development. Before requiring payment of any fee authorized hereunder, it must be evident that some reasonable benefit from any such capital improvements will be realized by any such development project.

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§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.

Credits or offsets for past or future payments toward capital improvement costs shall be adjusted for time-price differentials inherent in fair comparisons of monetary amounts paid or received at different times.

The receipt of an incidental benefit by any development shall not be construed as denying a reasonable benefit to any other new development.

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§7-20-6. Criteria and requirements necessary to implement collection of fees.

(a) As a prerequisite to authorizing counties to levy impact fees related to population growth and public service needs, counties shall meet the following requirements:

(1) A demonstration that population growth rate history as determined from the most recent base decennial census counts of a county, utilizing generally approved standard statistical estimate procedures, in excess of one percent annually averaged over a five-year period since the last decennial census count; or a demonstration that a total population growth rate projection of one percent per annum for an ensuing five-year period, based on standard statistical estimate procedures, from the current official population estimate of the county;

(2) Adopting a countywide comprehensive plan;

(3) Reviewing and updating any comprehensive plan at no less than five-year intervals;

(4) Drafting and adopting a subdivision control ordinance;

(5) Keeping in place a formal building permit and review system which provides a process to regulate the authorization of applications relating to construction or structural modification. The county shall adopt, pursuant to §7-1-3n of this code, the state building code into any such building permit and review system; and

(6) Providing an improvement program which shall include:

(A) Developing and maintaining a list within the county of particular sites with development potential;

(B) Developing and maintaining standards of service for capital improvements which are fully or partially funded with revenues collected from impact fees; and

(C) Lists of proposed capital improvements from all areas, containing descriptions of any such proposed capital improvements, cost estimates, projected time frames for constructing such improvements and proposed or anticipated funding sources.

(b) Capital improvement programs may include provisions to provide for the expenditure of impact fees for any legitimate county purpose. This may include the expenditure of fees for partial funding of any particular capital improvement where other funding exists from any source other than the county or exists in combination with other funds available to the county: *Provided*, That for such expenditures to be considered legitimate, no county or other local authority may deny or withhold any reasonable benefit that may be derived therefrom from any development project for which such impact fee or fees have been paid.

(c) Capital improvement programs for public elementary and secondary school facilities may include provisions to spend impact fees based on a computation related to the following: (1) The existing local tax base; and (2) the adjusted value of accumulated infrastructure

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investment, based on net depreciation, and any remaining debt owed thereon. Any such computation must establish the value of any equity shares in the net worth of an impacted school system facility, regardless of the existence of any need to expand such facility. Impact fee revenues may only be used for capital replacement or expansion.

(d) Additional development areas may be added to any plan or capital improvements program provided for hereunder if a county government so desires. The standards governing the construction or structural modification for any such additional area shall not deviate from those adopted and maintained at the time such addition is made.

(e) The county may modify annually any capital improvements plan in addition to any impact fee rates based thereon, pursuant to the following:

(1) The number and extent of development projects begun in the past year;

(2) The number and extent of public facilities existing or under construction;

(3) The changing needs of the general population;

(4) The availability of any other funding sources; and

(5) Any other relevant and significant factor applicable to a legitimate goal or goals of any such capital improvement plan.

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§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

(a) Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers.

Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of §7-20-6 of this code are hereby authorized to assess, levy, collect, and administer any tax or fee as has been or may be specifically authorized by the Legislature by general law to the municipalities of this state: *Provided*, That any assessment, levy, or collection shall be delayed 60 days from its regular effective date: *Provided, however*, That in the event 15 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within 45 days after any impact fee or levy is imposed by the county commission pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary or general election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the ballot has been given by publication of Class II legal advertisement and publication area shall be the county where such fee or levy is imposed: *Provided further*, That counties may not "double tax" by applying a given tax within any corporate boundary in which that municipality has implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

(b) In determining a proportionate share of capital improvements and public services costs, the following factors shall be considered:

(1) The need for new capital improvements and public services to serve new development based on an existing capital improvements plan that shows: (A) Any current deficiencies in existing capital improvements and services that serve existing development and the means by which any such deficiencies may be eliminated within a reasonable period of time by means other than impact fees or additional levies; and (B) any additional demands reasonably anticipated as the result of capital improvements and public services created by new development;

(2) The availability of other sources of revenue to fund capital improvements and public services, including user charges, existing taxes, intergovernmental transfers, in addition to any special tax or assessment alternatives that may exist;

(3) The cost of existing capital improvements and public services;

(4) The method by which the existing capital improvements and public services are financed;

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(5) The extent to which any new development, required to pay impact fees, has contributed to the cost of existing capital improvements and public services in order to determine if any credit or offset may be due such development as a result thereof;

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

(7) The extent to which any new development is required, as a condition of approval, to construct and dedicate capital improvements and public services which may give rise to the future accrual of any credit or offsetting contribution; and

(8) The time-price differentials inherent in reasonably determining amounts paid and benefits received at various times that may give rise to the accrual of credits or offsets due new development as a result of past payments.

(c) Each county shall assess impact fees pursuant to a standard formula so as to ensure fair and similar treatment to all affected persons or projects. A county commission may provide partial or total funding from general or other nonimpact fee funding sources for capital improvements and public services directly related to new development, when such development benefits some public purpose, such as providing affordable housing and creating or retaining employment in the community.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

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§7-20-7a. Impact fees for affordable housing.

(a) The Legislature finds that:

(1) There is a lack of affordable housing in counties that impose impact fees because the cost of the fees along with the economic conditions in those counties has resulted in low and moderate income persons, persons on fixed incomes, the elderly and persons with special needs, not being able to obtain safe, decent and affordable housing;

(2) A lack of affordable housing affects the ability of a community to develop and maintain strong and stable economies, and impairs the health, stability and self-esteem of individuals and families; and

(3) Financing affordable housing particularly in high growth counties is becoming increasingly difficult.

For these reasons, it is in the public interest to encourage counties that have imposed impact fees and those considering the imposition of impact fees to fairly assess and discount impact fees so as not to limit safe, decent and affordable housing.

(b) On or before July 1, 2012, a county imposing impact fees shall enact an affordable housing component with a discount impact fees schedule, based upon the new homes value compared to the most recent annual single dwelling residential housing index created in section two-b, article one, chapter eleven of this code, to the county's impact fees ordinance. The impact fees schedule shall be updated annually to reflect the changes to the single dwelling residential housing index.

(c) The affordable housing component shall:

(1) Take into account all the different types of housing, including single family detached, single family attached, duplex, town house, apartment, condominium and manufactured home; and

(2) Include a discount for mobile homes, as defined in section one, article one, chapter seventeen-a of this code, based upon the value set out in the National Automobile Dealers Association book.

(d) The county commission shall annually approve, by a majority vote, any increase or decrease in the impact fees schedule.

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§7-20-8. Use and administration of impact fees.

(a) Revenues collected from the payment of impact fees shall be restricted to funding new and additional capital improvements or expanded or extended public services which benefit the particular developments from which they were paid. Except as provided herein, to ensure that developments for which impact fees have been paid receive reasonable benefits relative to such payments, the use of such funds shall be restricted to areas wherein development projects are located. County commissions shall have discretion in determining geographical configurations related to the expenditure of impact fee collections.

(b) Impact fees may only be spent on those projects specified in the capital improvement plan described in this article.

(c) When impact fees are collected, the county commission shall enter into agreements with any affected party providing new development in order to ensure compliance with the provisions of this article.

(d) Impact fee receipts shall be specifically earmarked and retained in a special account. All receipts shall be placed in interest-bearing accounts wherein the interest gained thereon shall accrue. All accumulated interest shall be published at least once each fiscal period. The county commission shall provide an annual accounting for each account containing impact fee receipts showing the particular source and amount of all such receipts collected, earned, or received, and the capital improvements and public services that were funded, in whole or in part, thereby.

(e) Impact fees shall be expended only in compliance with the plan. Impact fee receipts shall be expended within six years of receipt thereof unless extraordinary and compelling reasons exist to retain them beyond this period. Such extraordinary or compelling reasons shall be identified and published by the county commission in a local newspaper of general circulation for at least two consecutive weeks.

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§7-20-9. Refund of unexpended impact fees.

(a) The owner or purchaser of property for which impact fees have been paid may apply for a refund of any such paid fees. Such refund shall be made when a county commission fails to expend such funds within six years from the date such fees were originally collected. The county commission shall notify potential claimants by first class mail deposited in the United States mail and directed to the last known address of any such claimant. Only the owner or purchaser may apply for such refund. Application for any refund must be submitted to the county commission within one year of the date the right to claim the refund arises. All refunds due and unclaimed shall be retained in the special account and expended as required herein, except as provided in this section. The right to claim any refund may be limited by the provisions of section five in this article.

(b) When a county commission seeks to terminate any impact fee requirement, all unexpended funds shall be refunded to the owner or purchaser of the property from whom such fund was initially collected. Upon the finding that any or all fee requirements are to be terminated, the county commission shall place notice of such termination and the availability of refunds in a newspaper of general circulation one time a week for two consecutive weeks and shall also notify all known potential claimants by first class mail deposited with the United States postal service at their last known address. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the General Fund and used for any public purpose. A county commission is released from this notice requirement if there are no unexpended balances within an account or funds being terminated.

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§7-20-10. Impact fees required to be consistent with other development regulations.

County commissions that require the payment of impact fees in providing capital improvements and public services shall incorporate such financial requirements within a master land use plan in order that any new development or developments are not required to contribute more than their proportionate share of the cost of providing such capital improvements and public services.

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§7-20-11. Additional powers.

(a) In addition to any other powers which a county may now have and not withstanding the provisions of section six of this article, each county, by and through its county commission, shall have the following powers:

(1) To acquire, whether by purchase, construction, gift, lease or otherwise, one or more infrastructure projects, or additions thereto, which shall be located within the county;

(2) To lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any infrastructure projects for such rentals or amounts and upon such terms and conditions as the county commission may deem advisable;

(3) To establish a special infrastructure fund as a separate fund into which all special service fees and other revenues designated by the county commission shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if special infrastructure revenue bonds are issued by the county commission; and

(4) To impose a countywide service fee to pay the costs of one or more infrastructure projects, including, but not limited to, the payment of debt service on any revenue bonds issued under section thirteen of this article.

(b) For purposes of this section and its implementation and use:

(1) "Capital improvements" means the following public facilities or assets that are owned, supported or established by a county commission:

(A) Water treatment and distribution facilities;

(B) Wastewater treatment and disposal facilities;

(C) Sanitary sewers;

(D) Storm water, drainage and flood control facilities; and

(E) Public road systems, including, but not limited to, rights-of-way, lighting, sidewalks and gutters.

"Capital improvements" as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. "Capital improvement" does not include costs associated with the operation, repair, maintenance or full replacement of capital improvements. "Capital improvement" does include reasonable costs for planning, design, engineering, land acquisition and other costs directly associated with the capital improvements described herein, whether incurred prior to or subsequent to imposition of a

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countywide service fee. This includes costs incurred by a developer prior to imposition of the countywide service fee that would have been incurred by the county commission as part of the cost of capital improvement, provided such costs were not incurred more than thirty-six months before the county commission adopts the order imposing the countywide service fee, or such shorter period, as determined to be reasonable in the sole discretion of the county commission.

(2) "Plan" means the plan for special infrastructure projects that includes one or more capital improvements, as defined in this section that is adopted by a county commission in conformity with the requirements of this article.

(c) Before commencing certain infrastructure projects, the county commission shall obtain written confirmations from an affected public utility or the West Virginia Department of Transportation or other agency, as provided in this section:

(1) If the project includes water, wastewater or sewer improvements, the county commission shall obtain from the utility or utilities that provide service in the area or areas where the improvements will be made that the utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility's reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless the project will continue to be owned by the county commission.

(2) If the special infrastructure project includes improvements other than as set forth in subdivision (1), subsection (b) of this section that will be transferred to the West Virginia Department of Transportation or other governmental agency, written evidence that the department or agency will accept the transfer if the infrastructure project is built in conformance with requirements of the Department of Transportation, or other agency, pursuant to plans and specifications approved by the department or other agency.

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§7-20-12. Countywide service fees.

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least 30 days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary or general election held in the county.

(4) The order of the county commission shall provide for the administration, collection, and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the service fee to the county commission in accordance with the order establishing the fee.

(5) The terms “employed”, “employee”, “employer” and “self-employed” have the following meaning:

(A) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the county.

(B) “Employee” means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages, or other compensation.

(C) “Employer” means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust,

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governmental body, or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) "Self employed individual" means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business, or enterprise of any kind within the county's geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued pursuant to §7-20-13 of this code and any costs related to the administration, collection, and enforcement of the service fee.

(b) Any order entered by a county commission imposing a countywide service fee pursuant to this section, or increasing or decreasing a countywide service fee previously adopted pursuant to this section, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for the publication shall be the county. The order shall not become effective until it is ratified by a majority of the lawful votes cast thereon by the qualified voters of the county at a primary or general election, as the county commission shall direct. Voting thereon shall not take place until after notice of the referendum shall have been given by publication as above provided for the publication of the order after it is adopted by the county commission. The notice of referendum shall at a minimum include: (1) The date of the referendum; (2) the amount of countywide service fee; (3) a general description of the capital improvement or improvements included in the special infrastructure project to be financed with the service fee; (4) whether revenue bonds shall be issued; and (5) if bonds are to be issued, the estimated term of the revenue bonds. The county commission may include additional information in the notice of referendum.

(c) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

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§7-20-13. Bonds issued to finance infrastructure project.

(a) The county commission, in its discretion, may use the moneys in such special infrastructure fund to finance the costs of the special infrastructure projects on a cash basis. The county commission periodically may issue special infrastructure revenue bonds of the county as provided in this section to finance all or part of such special infrastructure projects and pledge all or any part of the moneys in such special infrastructure fund for the payment of the principal of and interest on such special infrastructure revenue bonds and for reserves therefor. Any pledge of the special infrastructure fund for special infrastructure revenue bonds shall be a prior and superior charge on the special infrastructure fund over the use of any of the moneys in the fund to pay for the cost of any of such purposes on a cash basis.

(b) Such special infrastructure revenue bonds periodically may be authorized and issued by the county commission to finance, in whole or in part, the special infrastructure projects in an aggregate principal amount not exceeding the amount which the county commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special infrastructure fund.

(c) The issuance of special infrastructure revenue bonds shall be authorized by an order of the county commission and such special infrastructure revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such denomination; be in registered form, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices; and shall have such other terms and provisions as determined by the county commission. Such special infrastructure revenue bonds shall be signed by the president of the county commission under the seal of the county commission, attested by the clerk of the county commission. Special infrastructure revenue bonds shall be sold in such manner as the county commission determines is for the best interests of the county.

(d) The county commission may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such special infrastructure revenue bonds as to the custody, safeguarding and disposition of the proceeds of such special infrastructure revenue bonds, the moneys in such special infrastructure fund, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of special infrastructure revenue bonds by the county commission under the provisions of this section; as to the maintenance or revision of the amounts of such fees; as to the extent to which swap agreements, as defined in section two-h, article two-g, chapter thirteen of this code, shall be used in connection with such special infrastructure revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the county commission shall consider necessary or desirable, if any, under which such fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the county commission in the best interests of the county and to enhance the marketability of such special infrastructure

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revenue bonds.

(e) After the issuance of any of the special infrastructure revenue bonds, the service fee pledged to the payment thereof may not be reduced as long as any of the special infrastructure revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the order, trust agreement or other proceedings under which the special infrastructure revenue bonds were issued.

(f) The special infrastructure revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the special infrastructure revenue bonds may not be considered to be obligations or debts of the state or of the county issuing the bonds and the credit or taxing power of the state or of the county issuing the bonds may not be pledged therefor, but the special infrastructure revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(g) A holder of the special infrastructure revenue bonds shall have a lien against the special infrastructure fund for payment of the special infrastructure revenue bond and the interest thereon and may bring suit to enforce the lien.

(h) A county commission may issue and secure additional bonds payable out of the special infrastructure fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission and payable from the special infrastructure fund.

(i) For purposes of this article:

(1) "Special infrastructure revenue bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by a county commission, the proceeds of which are used directly or indirectly to finance or refinance special infrastructure projects within the county and financing costs and that are secured by or payable from the special service fees;

(2) "Special infrastructure project" means "capital improvements" as that term is defined in section eleven of this article; and

(3) "Special infrastructure fund" means that fund established and held by the sheriff of the county or a trustee for bondholders, as the case may be, into which the special fees imposed pursuant to section twelve of this article are deposited.

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§7-20-14. Use of proceeds from sale of bonds.

(a) The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) The costs of acquiring any special infrastructure project shall be deemed to include the following:

(1) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, the acquisition of equipment and site clearing, grading and preparation;

(2) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(3) Real property acquisition costs;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(5) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by county employees in connection with the implementation of a project;

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the implementation of project plans;

(8) Payments made, in the discretion of the county commission, which are found to be necessary or convenient to the implementation of project plans; and

(9) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

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§7-20-15. No contribution by county.

(a) No county commission shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring, constructing or financing a special infrastructure project to be acquired, constructed or financed, in whole or in part, out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county from accepting donations of property to be used as a part of an infrastructure project or to be used for defraying any part of the cost of any infrastructure project or from imposing a service fee as provided in section twelve of this article, which is dedicated, in whole or in part, to the infrastructure project or to payment of debt service on revenue bonds issued pursuant to this article.

(b) The bonds issued pursuant to this article shall be payable solely from: (1) The revenue derived from the infrastructure project or the financing thereof; (2) the service fee imposed pursuant to section twelve of this article; or (3) any combination of these sources.

(c) No county commission shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring, constructing or financing an infrastructure project. However, all necessary preliminary expenses actually incurred by a county commission in the making of surveys, taking options, preliminary planning and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by the county commission out of any surplus contained in any item of budgetary appropriation or any revenues, including, but not limited to, service fees, collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

WV Legislature

§7-20-16. Bonds made legal investments.

Bonds 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 this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

WV Legislature

§7-20-17. Construction of article.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as alternative or additional; and this article shall not be construed as requiring an election on issuance of the bonds by the voters of a county prior to the issuance of bonds hereunder by the county commission and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

WV Legislature

§7-20-18. No notice, consent or publication required.

No notice to or consent or approval by any other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, a mortgage or deed of trust under the authority of this article. No publication or notice shall be necessary to the validity of any resolution or proceeding had under this article, except where publication or notice is expressly required by this article.

WV Legislature

§7-20-19. Public officials exempt from personal liability.

No member of a county commission or other county officer shall be personally liable on any contract or obligation executed pursuant to the authority contained in this article. Nor shall the issuance of bonds under this article be considered as misfeasance in office.

WV Legislature

§7-20-20. Cooperation by public bodies.

For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a special infrastructure project located, in whole or in part, within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to an authority;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with an infrastructure project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any parcel of land within the jurisdiction of the public body or make exceptions from building regulations and ordinances if such functions are of the character which the public body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished for the special infrastructure project of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a special infrastructure project that is, in whole or in part, located in its jurisdiction;

(8) Lend, grant or contribute funds to a county commission for purposes of a special infrastructure project; and

(9) Employ any funds belonging to or within the control of the public body, including funds derived from the sale or furnishing of property, service, or facilities to a county commission for a special infrastructure project, in the purchase of the bonds or other obligations of a county commission issued under this article and, as the holder of such bonds or other obligations, exercise the rights connected therewith.

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§7-20-21. Relocation of public utility lines or facilities to accommodate special infrastructure project.

(a) In the event a county commission determines that any public utility line or facility located upon, across or under any portion of a street, avenue, highway, road or other public place or way shall be temporarily or permanently readjusted, removed, relocated, changed in grade or otherwise altered (each and all hereinafter for convenience referred to as "relocation") in order to accommodate any infrastructure project undertaken pursuant to the provisions of this article, the cost of the relocation shall be borne by the county commission.

(b) For purposes of this section, the term "cost of relocation" shall include the entire amount paid by such utility, exclusive of any right-of-way costs incurred by such utility, properly attributable to such relocation after deducting therefrom any increase in the value of the new line or facility and salvage derived from the old line or facility.

(c) The cost of relocating utility lines or facilities, as defined herein, in connection with any special infrastructure project is hereby declared to be a cost of the project.

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§7-20-22. Special infrastructure projects financed by service fee considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any special infrastructure project acquired, constructed or financed, in whole or in part, by service fees imposed by a county commission under section twelve of this article shall be considered to be a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

(b) The county commission shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code and compliance with article one-c of said chapter for any special infrastructure project funded pursuant to section twelve of this article exceeding $25,000 in total cost.

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the county commission or other person soliciting the bids may reject all bids and solicit new bids on the project.

(d) No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

(e) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of $50,000 by regular full-time employees of the county commission: Provided, That no more than $50,000 shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission comes to an agreement with volunteers, or a volunteer group, by which the county commission will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the

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county commission: Provided, That the total cost of the construction or repair projects does not exceed $50,000.

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§7-20-23. Excess funds; termination of service fee.

(a) When revenue bonds have been issued as provided in this article and the amount of service fees imposed pursuant to section twelve of this article and collected by the sheriff, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the finding of required debt service and maintenance reserves, the additional amount shall be set aside in a separate fund and used to retire some or all of the outstanding revenue bonds before their maturity date.

(b) Once the revenue bonds issued as provided in this article are no longer outstanding or the county commission determines that sufficient reserves have been or will be accumulated as of a specified date to pay all future debt service on the outstanding bonds, the service fee to payable services on a subsequent issue of revenue bonds imposed pursuant to section twelve of this article may not be imposed or collected for subsequent weeks after that date. Termination of the service fee as provided in this section shall not bar or otherwise prevent the county commission from collecting service fees that accrued before the termination date.

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§7-20-24. Severability.

If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.

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