WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
SENATE BILL NO. 630

(Passage)

PASSED March 5, 1983

In Effect from Passage
AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen-a, relating to authorizing the issuance and sale of notes as special obligations of the state of West Virginia to finance the construction of surface transportation improvements; setting forth the purpose and scope thereof; definition of terms; authorizing the issuance of notes or other obligations either definitive or temporary; defining the use of the proceeds of such notes; providing for the execution of notes; providing for the issuance of a declaration establishing terms and sale of notes issued; providing for matters to be contained in the declaration establishing the terms and sale of such notes; manner of sale of notes including determination of price, and terms and conditions to be made by five-member group and composition thereof; five-member group to serve as financial advisor with authorization to retain professional financial assistance; security of notes issued; pledge and assignment of security; validity and binding effect of pledge or assignment; trust agreements with trust companies or banks to be set forth in trust agreements; rights of individual holders of notes until such notes are discharged; limitation of liability of the state of West Virginia, commissioner of the West Virginia department of highways and any officers of the state of West Virginia executing notes or agreements in connection with the issuance of notes or other obligations; authorizing certain persons, companies, banks, associations who or which
may invest funds properly and legally, including capital, belonging to them or in their control, to invest in such notes; exemption of notes and income from certain taxation; providing for attorney general or his duly appointed legal representative to serve as note counsel and that legal expenses approved by attorney general, incurred in the execution of this act, shall be a payable cost thereunder.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen-a, to read as follows:

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.

§17-17A-1. Purpose and scope.

This article is intended to facilitate the acquisition of right-of-way for and the construction of improvements to interstate routes sixty-four and seventy-seven 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 specifically appropriated or dedicated therefor by the state, or from amounts which may properly be 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 sixty-four million dollars, to be issued to provide construction financing for such improvements 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 power of the state.

§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 interstate completion projects on interstate route sixty-four or on interstate route seventy-seven, as to which all or a portion of the cost thereof is to be reimbursed to the state under federal surface transportation legislation.

§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 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.

§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 deter-
mined, including the date or dates, time or times of
issuance, time or times and amount or amounts of ma-
turity 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 de-
termine 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 mem-
bers of the five-member group, comprised of the trea-
surer, the auditor, the commissioner of finance and ad-
ministration, 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 im-
provements. 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.


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
interest 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 seventeen;
(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) 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 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.
§17-17A-6. Rights of holders; limitation on liability of state.

1. The state of West Virginia does hereby pledge to and
2. agree with the holders of any notes issued under this
3. article, that the state will not limit or alter the rights
4. hereby vested in the commissioner to fulfill the terms
5. of any agreements made with the holders thereof, or in
6. any way impair the rights and remedies of such holders
7. until such notes, together with the interest thereon, with
8. interest on any unpaid installments of interest, and
9. all costs and expenses in connection with any action or
10. proceeding by or on behalf of such holders, are fully met
11. and discharged. The commissioner is hereby authorized
12. to include this pledge and agreement of the state in any
13. agreement with the holders of such notes.
14. The holder of any note, or the trustee therefor, shall
15. have the right to bring suit for the payment of such note
16. or to compel the enforcement of any agreement securing
17. such note to the extent therein provided. Such notes
18. shall be special obligations of the state, payable solely
19. from the sources herein provided, and shall not be a
20. general obligation debt or liability of the state or con-
21. stitute any claim on its general revenues or taxing power.
22. Neither the commissioner nor any other officer of the
23. state executing notes or other agreements hereunder shall
24. have any personal liability thereon or be subject to per-
25. sonal accountability therefor.

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

1. The notes are hereby made securities in which all
2. insurance companies and associations, and other persons
3. carrying on an insurance business, all banks, bankers,
4. trust companies, building and loan associations, savings
5. and loan associations, investment companies and other
6. persons carrying on a banking business, and other per-
7. sons, except administrators, guardians, executors, trustees
8. and fiduciaries, who are now or who may hereafter be
9. authorized to invest in bonds or other obligations of the
10. state, may properly and legally invest funds including
11. capital in their control or belonging to them.
12. 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.

§17-17A-8. Attorney general or his duly appointed legal representative to serve as note counsel; legal expenses a payable cost.

The attorney general, or his duly appointed legal representative, shall serve as note counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such notes. Legal expenses, approved by the attorney general, incurred in the execution of this act, shall be a payable cost thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

James Durden  
Chairman House Committee

Originated in the Senate.

In effect from passage.

Jesse C. Yulee  
Clerk of the Senate

Donald L. Kepp  
Clerk of the House of Delegates

Warren McDowell  
President of the Senate

W. M. Bevins, Jr.  
Speaker House of Delegates

The within __________________________ this the 24 __________________________ day of ________________, 1983.

J[ohn] L[ee] R[aymond]  
Governor