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APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 630

(By Mr. McGraw, Mr. President)



PASSED March 8 1983

In Effect from Passage



ENROLLED
Senate Bill No. 630
(By MR. MCGRAW, MR. PRESIDENT)

[Passed March 8, 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.

1 This article is intended to facilitate the acquisition of
2 right-of-way for and the construction of improvements to
3 interstate routes sixty-four and seventy-seven to be
4 funded wholly or in part by amounts to be made avail-
5 able pursuant to the Federal Surface Transportation
6 Assistance Act of one thousand nine hundred eighty-two,
7 or from amounts specifically appropriated or dedicated
8 therefor by the state, or from amounts which may prop-
9 erly be expended from the state road fund under article
10 three, chapter seventeen of this code. This article au-
11 thorizes notes, in an aggregate amount of outstanding
12 notes not to exceed sixty-four million dollars, to be issued
13 to provide construction financing for such improvements
14 in anticipation of reimbursement from such sources, but
15 such notes will be special obligations of the state only,
16 and will not be general obligations of the state or secured
17 by any claim on the general credit or taxing power of
18 the state.

§17-17A-2. Definitions.

1 As used in this article, the following words and terms
2 shall have the following meaning:
3 "Commissioner" means the West Virginia commissioner
4 of highways.

5 "Cost" when used with respect to any surface trans-
6 portation improvement, means any and all costs of ac-
7 quiring, constructing, reconstructing, replacing, complet-
8 ing or repairing any surface transportation improvement,
9 including without limiting the generality of the foregoing,
10 land, property, rights, franchises, materials, labor and
11 services, contractors' fees, planning and engineering ex-
12 penses, financing costs, legal fees, trustees' or paying
13 agents' fees and interest on obligations issued under this
14 article.

15 "Note" means any note or other obligation issued pur-
16 suant to this article.

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

22 "Surface transportation improvement" means inter-
23 state completion projects on interstate route sixty-four
24 or on interstate route seventy-seven, as to which all or a
25 portion of the cost thereof is to be reimbursed to the
26 state under federal surface transportation legislation.

§17-17A-3. Authorization of notes.

1 The commissioner is hereby authorized to pay the cost
2 of any surface transportation improvement through the
3 issuance of special obligation notes. No such notes may
4 be issued, however, unless they are part of an issue
5 described in a written declaration executed by the gov-
6 ernor and the commissioner and filed in the office of the
7 secretary of state.

8 Except in the case of renewal notes, the proceeds of
9 such notes shall be used solely for the payment of the
10 cost of the surface transportation improvements which
11 were issued to finance, which shall be verified by the
12 commissioner and under such further restrictions, if any,
13 as may be provided. If the proceeds of such notes, by
14 error or calculation or otherwise, shall be less than the
15 cost of the related surface transportation improvements,
16 additional notes may in like manner be issued to provide

17 the amount of such deficit, and unless otherwise provided
18 in the trust agreement hereinafter mentioned, shall be
19 deemed to be of the same issue and shall be entitled to
20 payment from the same sources, without preference or
21 priority of the notes first issued for the same related
22 surface transportation improvements. If the proceeds of
23 notes issued for any related surface transportation im-
24 provements shall exceed the cost thereof, the surplus
25 shall be applied to the payment, purchase or redemption
26 of such notes.

27 Such notes shall be executed by the governor and the
28 commissioner, under the great seal of the state, attested
29 by the facsimile signature of the secretary of state, and
30 the coupons, if any, attached thereto shall be authenti-
31 cated by the facsimile signature of the commissioner. The
32 governor and the commissioner may execute such notes
33 by their facsimile signatures, but, unless provision has
34 been made for the authentication thereof by a trustee
35 determined to be responsible by the commissioner, each
36 note shall bear at least one manual signature.

37 Prior to the preparation of definitive notes, the gover-
38 nor and the commissioner may under like restrictions
39 issue temporary notes with or without coupons, exchange-
40 able for definitive notes upon the issuance of the latter.
41 Such notes may be issued without any other proceedings,
42 or the happening of any other conditions or things than
43 those proceedings, conditions and things which are speci-
44 fied and required by this article or by the constitution of
45 the state.

**§17-17A-4. Establishment of terms and sale of notes; financial
advisor.**

1 The description contained in any declaration with res-
2 pect to an issue of notes hereunder shall specify the
3 particular surface transportation improvements to be
4 financed through the issuance of the notes, the estimate of
5 the cost of such improvements, the aggregate amount of
6 outstanding notes which may at any point in time consti-
7 tute a part of such issue, the time or times and manner
8 of sale of such notes, and the particular terms of such
9 notes, or the manner in which such terms will be deter-

10 mined, including the date or dates, time or times of
11 issuance, time or times and amount or amounts of ma-
12 turity or maturities, specified or variable rate or rates
13 of interest, the form of such notes and provisions for
14 registration or exchange, if applicable, the method and
15 manner of payment of such notes, the provisions, if any,
16 for redemption or renewal of such notes, and specifying
17 such other similar matters as the commissioner may de-
18 termine to be necessary and appropriate in connection
19 with the sale and issuance of the notes.

20 The notes of an issue described in any such declaration
21 shall be sold in such manner, at such price or prices and
22 on such terms and conditions as no less than three mem-
23 bers of the five-member group, comprised of the trea-
24 surer, the auditor, the commissioner of finance and ad-
25 ministration, the tax commissioner and the commissioner,
26 determines to be in the best interest of the state, taking
27 into account the financial responsibility of the purchaser
28 and the terms and conditions of purchase and especially
29 the availability of the proceeds of the notes when needed
30 to pay the cost of the related surface transportation im-
31 provements. Such five-member group shall serve as
32 financial advisor and upon the determination of no less
33 than three members, as aforesaid, may retain professional
34 financial assistance for such purpose.

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

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

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

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

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

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

21 (e) Any other amounts specifically designated for the
22 purpose of paying any such costs, but only to the extent
23 appropriated by the Legislature and paid from general
24 revenues prior to such pledge or dedicated for such pur-
25 pose by the Legislature from proprietary revenues of the
26 state.

27 Any such pledge or assignment shall be valid and bind-
28 ing from the time it is made, and the lien of such pledge
29 or assignment shall be enforceable and need not be
30 perfected by delivery or any filing or further act. Such
31 lien shall be valid against all parties having claims of
32 any kind in tort, contract or otherwise, irrespective of
33 whether such parties have notice of the lien of such
34 pledge or assignment.

35 The commissioner may enter into an agreement or
36 agreements with any trust company or with any bank
37 having the power of a trust company, either within or
38 outside of the state, as trustee for the holders of notes
39 issued hereunder, setting forth therein such duties of the
40 state and of the commissioner in respect of the acquisition
41 and construction of surface transportation improvements,
42 the conservation and application of all moneys, the in-
43 surance of moneys on hand or on deposit, and the rights
44 and remedies of the trustee and the holders of the notes,
45 as may be agreed upon with the original purchasers of
46 such notes, and including therein provisions restricting
47 the individual right of action of holders as is customary
48 in such trust agreements to protect and enforce the rights
49 and remedies of the trustee and the holders. All expenses
50 incurred in carrying out such agreement may be treated
51 as a part of the cost of construction of the surface trans-
52 portation 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

13 be exempt from taxation, except for death and gift taxes,
14 taxes on transfers, sales taxes, real property taxes and
15 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.

1 The attorney general, or his duly appointed legal repre-
2 sentative, shall serve as note counsel and shall be respon-
3 sible for the issuance of a final approving opinion regard-
4 ing the legality of the sale of such notes. Legal expenses,
5 approved by the attorney general, incurred in the execu-
6 tion 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

Arnold Amos
Chairman House Committee

Originated in the Senate.

In effect from passage.

Todd C. Wilch
Clerk of the Senate

Donald L. Stapp
Clerk of the House of Delegates

Walter McJannet
President of the Senate

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

The within *approved* this the *24*

day of *March*, 1983.

John R. Roper
Governor



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SECY. OF STATE