

No: 750

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 750

(Originating in the

(By Senator *Committee on Finance*)



PASSED March 14, 1987

In Effect from Passage



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Senate Bill No. 750

(Originating in the Committee on Finance)

[Passed March 14, 1987; in effect from passage.]

AN ACT to amend article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to further amend said chapter twenty-one-a by adding thereto a new article, designated article eight-a, relating to unemployment compensation debt generally; providing for an optional assessment on employees and employers to prevent a deficit upon the payment of benefits; authorizing the commissioner of the department of employment security to borrow money on behalf of 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; empowering the commissioner to borrow such money from the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, or from any private financial institution, or both; empowering the commissioner to borrow such money and issue revenue bonds as evidence of such borrowing; creating in the state treasury a special nonrevolving fund to be known as “the

employment security debt note fund”; creating in the state treasury a special nonrevolving fund to be known as “the employment security debt bond fund”; describing the portion of assessments payable to such funds; authorizing the commissioner to pledge revenues of the special revenue funds to meet the requirements of a sinking fund; authorizing, by resolution of the commissioner, the issuance of bonds or notes; providing for trust agreements for holders of bonds or notes; providing for payments from the special revenue funds to the municipal bond commission; prohibiting the commissioner from pledging the credit or taxing power of the state; exempting bonds or notes issued by the commissioner from certain taxes; providing for assessments on the gross wages of employees and an assessment on employers, and dedicating such assessments to the special revenue funds; authorizing the commissioner to adjust such assessments within certain limitations; establishing the West Virginia state board of investments as ex officio a board of investments for funds of the consolidated fund and the consolidated pension fund as they are made available for loans to the department of employment security; authorizing the board of investments to invest moneys, securities, and other assets of the consolidated fund 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; setting forth the requirements for such loan; limiting the authority of the board of investments to make loans in an aggregate principal amount not to exceed two hundred sixty million dollars; requiring the board of investments to submit to the Legislature annually a full report of its activities so long as any loan is outstanding; and providing for the termination of the authority of the board of investments to make loans.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; and to further amend said chapter by adding thereto a new article, designated article eight-a, all to read as follows:

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**§21A-5-10a. Optional assessments on employers and employees.**

1 (a) On and after the first day of July, one thousand nine
2 hundred eighty-seven, if the commissioner determines for a
3 given projected quarter that the rates established under the
4 provisions of section ten of this article will not result in
5 payments being made to the unemployment compensation
6 fund in an amount sufficient to finance the payment of
7 benefits during such quarter, the commissioner shall certify
8 such fact to the governor, and the governor shall, by
9 executive order, direct the commissioner to establish a level
10 of assessment for employees and employers in accordance
11 with the provisions of this section which is sufficient to
12 prevent, to the extent possible, a deficit in the funds
13 available to pay benefits to eligible individuals.

14 (b) Pursuant to such executive order, every employer,
15 contributing and reimbursable, subject to this chapter,
16 shall be required to withhold from all persons in his
17 employment an assessment which shall be in an amount not
18 to exceed fifteen one hundredths (15/100) of one percent of
19 an employee's gross wages, which amount, together with an
20 assessment contributed by the employer in an amount as
21 determined in accordance with the provisions of subsection
22 (c) of this section, except for reimbursable employers who
23 shall not be assessed, shall be paid to the department of
24 employment security' on a form prescribed by the
25 commissioner, at the same time and under the same
26 conditions as the quarterly contribution payments required
27 under the provisions of chapter twenty-one-a, article five,
28 section seven of this code. The commissioner shall have the
29 right to collect any delinquent assessments under this
30 section in the same manner as provided for in chapter
31 twenty-one-a, article five, section sixteen of this code; and
32 in addition, any delinquency hereunder shall bear interest
33 as set forth in chapter twenty-one-a, article five, section
34 seventeen of this code.

35 (c) The commissioner shall establish the exact amounts
36 of the employers' and employees' assessments at a level
37 sufficient to generate the revenues needed to prevent a
38 deficit which would otherwise result from the payment of
39 benefits to eligible individuals, subject only to the

40 limitation established in the preceding subsection (b) of this
41 section. After determining the level of assessment on the
42 gross wages of employees, the commissioner shall
43 determine a rate of assessment to be imposed upon
44 employers, except reimbursable employers, which rate
45 shall be expressed as a percentage of wages as defined in
46 section three, article one of this chapter, and which is
47 sufficient to cause the total statewide assessment on such
48 employers to equal the total statewide assessment imposed
49 upon employees.

ARTICLE 8A. EMPLOYMENT SECURITY DEBT FUNDS.

**§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.**

1 (a) For the single purpose of financing the repayment of
2 funds advanced to the department of employment security
3 by the federal government under the provisions of Section
4 1201 of the Social Security Act, 42 U.S.C.A. §1321, for such
5 advances which were made prior to the first day of July, one
6 thousand nine hundred eighty-seven, the commissioner of
7 the department of employment security is authorized on
8 behalf of the department of employment security, as
9 provided in this article:

10 (1) To borrow money, as contractual indebtedness, not
11 bonded, and issue notes as evidence of such borrowing; and
12 (2) To borrow money and issue revenue bonds as
13 evidence of such borrowing.

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

25 (c) The commissioner may borrow money as provided
26 for in subdivision (1), subsection (a) of this section, from the

27 consolidated fund and the consolidated pension fund
28 established under the provisions of section eight, article six,
29 chapter twelve of this code, or may borrow money from any
30 private financial institution or institutions, or may borrow
31 from both such funds and such institution or institutions, or
32 may borrow money as provided for in subdivision (2),
33 subsection (a) of this section, by issuing revenue bonds.
34 Prior to financing the repayment of funds advanced by the
35 federal government, the commissioner shall ascertain
36 which option or combination of options presents the terms
37 most economically favorable to the commissioner and the
38 employers and employees of this state, and shall proceed to
39 refinance the repayment in accordance with such terms.
40 (d) The principal of and interest on such bonds and
41 notes shall be payable solely from the special nonrevolving
42 funds created under the provisions of section two of this
43 article.

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

1 (a) There is hereby created in the state treasury a special
2 nonrevolving revenue fund to be known as "the
3 employment security debt note fund," into which shall be
4 paid a portion of all funds derived from the assessments
5 hereinafter set forth in this article. The portion of such
6 assessments payable to the fund shall be an amount directly
7 proportional to the ratio which the principal and interest on
8 notes issued under this article bears to the total amount of
9 principal and interest to be paid on indebtedness incurred
10 under the provisions of this article. This fund may also
11 receive funds from any other source, either state or federal.
12 (b) There is hereby created in the state treasury a special
13 nonrevolving revenue fund to be known as "the
14 employment security debt bond fund," into which shall be
15 paid a portion of all funds derived from the assessments
16 hereinafter set forth in this article. The portion of such
17 assessments payable to the fund shall be an amount directly
18 proportional to the ratio which the principal and interest on
19 bonds issued under this article bears to the total amount of
20 principal and interest to be paid on indebtedness incurred
21 under the provisions of this article. This fund may also
22 receive funds from any other source, either state or federal.

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

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

1 The issuance of bonds or notes under the provisions of
2 this article shall be authorized by a resolution of the
3 commissioner, which shall provide for the issuance of bonds
4 or notes in an amount sufficient to provide moneys
5 sufficient to repay the federal government for all advances
6 and interest thereon made to the West Virginia department
7 of employment security pursuant to Title 42 U.S.C.A.
8 §1321, which such advances were made prior to the first day
9 of July, one thousand nine hundred eighty-seven: *Provided,*
10 That competitive sealed bids shall be used to determine the
11 bond issuance agent. Such resolution shall prescribe the
12 rights and duties of the bondholders or noteholders and the
13 commissioner, and for such purpose may prescribe the form
14 of the trust agreement hereinafter referred to. The bonds or
15 notes shall be of such series, bear such date or dates, mature
16 at such time or times, bear interest at such rate or rates, be
17 payable at such times and intervals; be in such
18 denominations, be in such form, either coupon or fully
19 registered without coupons, or book entry, carrying such
20 registration exchangeability and interchangeability
21 privileges; be payable in such medium of payment and at
22 such place or places; be subject to such terms of such
23 redemption prices, and be entitled to such priorities on the
24 revenues paid into the special revenue fund as may be
25 provided in the resolution authorizing the issuance of the
26 bonds or notes or in any trust agreement made in connection

27 therewith. The bonds or notes shall be signed by the
28 governor and by the commissioner, under the great seal of
29 the state, attested by the secretary of state, and the coupons
30 attached thereto, if any, shall bear the facsimile signature of
31 the commissioner. In case any of the officers whose
32 signatures appear on the bonds or notes or coupons cease to
33 be such officers before the delivery of such bonds, such
34 signatures shall nevertheless be valid and sufficient for all
35 purposes the same as if such officers had remained in office
36 until such delivery.

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

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

47 Bonds or notes issued under the provisions of this article
48 shall be legal investments for banks, building and loan
49 associations, and insurance companies organized under the
50 laws of the state of West Virginia and for business
51 development corporations organized pursuant to chapter
52 thirty-one, article fourteen of the code of West Virginia.

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

1 The commissioner may enter into an agreement or
2 agreements with any trust company, or with any bank
3 having the powers of a trust company, either within or
4 outside the state, as trustee for the holders of bonds or notes
5 issued hereunder, setting forth therein such duties of the
6 commissioner in respect to the payment of the bonds or
7 notes, the conservation and application of all moneys, the
8 security for moneys on hand or on deposit, and the rights
9 and remedies of the trustee and the holders of the bonds or
10 notes, as may be agreed upon with the original purchasers
11 of such bonds or notes, except that competitive bids shall be
12 used to determine such trust company; and including
13 therein provisions restricting the individual right of action
14 of bondholders or noteholders as is customary in trust
15 agreements respecting bonds or notes and debentures of

16 corporations, protecting and enforcing the rights and
17 remedies of the trustee and the bondholders or noteholders.

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

1 From the special revenue funds established in accordance
2 with the provisions of section two of this article, the
3 commissioner shall make periodic payments to the state
4 municipal bond commission in an amount sufficient to meet
5 the requirements of any issue of bonds or notes sold under
6 the provisions of this article, as specified in the resolution of
7 the commissioner authorizing the issue and in any trust
8 agreement entered into in connection therewith. The
9 payment so made shall be placed by the commissioner in a
10 special sinking fund which is hereby pledged to and
11 charged with the payment of the principal of the bonds or
12 notes of such issue and the interest thereon, and to the
13 redemption or repurchase of such bonds or notes, such
14 sinking fund to be a fund for all bonds or notes of such issue
15 without distinction or priority of one over another. The
16 moneys in the special sinking fund, less such reserve for
17 payment of principal and interest as may be required by the
18 resolution of the commissioner authorizing the issue and
19 any trust agreement made in connection therewith, may be
20 used for the redemption of any of the outstanding bonds or
21 notes payable from such fund which by their terms are then
22 redeemable, or for the purchase of bonds or notes at the
23 market price; but not exceeding the price, if any, at which
24 such bonds or notes shall in the same year be redeemable;
25 and all bonds or notes redeemed or purchased shall
26 forthwith be canceled and shall not again be issued.

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

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

7 The bonds and notes authorized hereby shall contain on
8 their face a statement to the effect that: (1) Neither the state
9 of West Virginia nor any agency, political corporation or
10 political subdivision of the state of West Virginia is

11 obligated to pay the principal of or interest on the bonds or
12 notes except as provided in this article; and (2) neither the
13 faith and credit nor the taxing power of the state of West
14 Virginia or any agency, political corporation or political
15 subdivision of the state of West Virginia is pledged to the
16 payment of the principal of or interest on the bonds or notes
17 except as provided by this article.

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

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

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

1 (a) On and after the first day of July, one thousand nine
2 hundred eighty-seven, every employer, contributing and
3 reimbursable, subject to this chapter, shall be required to
4 withhold from all persons in his employment an assessment
5 which shall be in an amount not to exceed thirty-five one-
6 hundredths ($35/100$) of one percent of said employee's gross
7 wages, which amount, together with an assessment
8 contributed by the employer in an amount as determined in
9 accordance with the provisions of subsection (b) of this
10 section, except for reimbursable employers who shall not be
11 assessed, shall be paid to the department of employment
12 security on a form prescribed by the commissioner, at the
13 same time and under the same conditions as the quarterly
14 contribution payments required under the provisions of
15 chapter twenty-one-a, article five, section seven of this
16 code. The commissioner shall have the right to collect any
17 delinquent assessments under this section in the same
18 manner as provided for in chapter twenty-one-a, article
19 five, section sixteen of this code; and in addition, any
20 delinquency hereunder shall bear interest as set forth in
21 chapter twenty-one-a, article five, section seventeen of this
22 code.

23 (b) The commissioner shall establish the exact amounts
24 of the employers' and employees' assessments at a level
25 sufficient to generate the revenues needed to retire the

26 bonds or notes issued pursuant to this article and to pay
27 deferred interest owed to the federal government when due,
28 subject only to the limitation established in the preceding
29 subsection (a) of this section. After determining the level of
30 assessment on the gross wages of employees, the
31 commissioner shall determine a rate of assessment to be
32 imposed upon employers, except reimbursable employers,
33 which rate shall be expressed as a percentage of wages, as
34 defined in section three, article one of this chapter, except
35 that for purposes of this section such wages shall include all
36 of that part of the remuneration paid to an employee that is
37 less than twenty-one thousand dollars during any calendar
38 year, and which is sufficient to cause the total statewide
39 assessment on such employers to equal the total statewide
40 assessment imposed upon employees.

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

61 (d) Prior to the beginning of any quarter during which
62 bonds or notes authorized by this article will be
63 outstanding, the commissioner may adjust the amount of
64 the assessment set forth in subsection (a) of this section;
65 however, the amount is never to exceed thirty-five one-
66 hundredths ($35/100$) of one percent of each said employee's
67 gross wages. The assessment shall cease when all the bonds
68 or notes are repaid.

§21A-8A-9. West Virginia board of investments to act as board of investments for purposes of this article; powers.

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions of
3 article six, chapter twelve of this code, shall be ex officio a
4 board of investments for funds of the special investment
5 funds designated as the consolidated fund and the
6 consolidated pension fund as they are made available for
7 investment in accordance with the provisions of this article,
8 and as such, the board of investments may exercise all of the
9 powers and functions granted to it pursuant to the
10 provisions of said article six of chapter twelve in carrying
11 out the duties assigned to it under the provisions of this
12 article.

§21A-8A-10. Authority of the board of investments.

1 Upon application by the commissioner of the department
2 of employment security, the board of investments shall
3 invest moneys, securities, and other assets of the
4 consolidated fund and the consolidated pension fund
5 established under the provisions of section eight, article six,
6 chapter twelve of this code, in the form of interest-bearing
7 loans to the department of employment security to finance
8 the repayment of funds advanced to the department of
9 employment security by the federal government under the
10 provisions of Section 1201 of the Social Security Act, 42
11 U.S.C.A. §1321. Such loan shall be made, if at the time of the
12 commitment to make the loan, the board of investments
13 determines that there exists a plan for the repayment of
14 such loan which is satisfactory to the board of investments
15 and which can be carried out by the department of
16 employment security, that the loan is needed to assist the
17 department of employment security to repay advances
18 made from the federal unemployment account in the
19 unemployment trust fund in accordance with the provisions
20 of Title 42 U.S.C.A. §1321. The board shall also determine
21 that all of the proceeds of a loan made under the provisions
22 of this article will be used to repay advances made to the
23 department of employment security from the federal
24 unemployment account in the unemployment trust fund in
25 accordance with the provisions of Title 42 U.S.C.A. §1321,

26 which advances were made prior to the first day of July, one
27 thousand nine hundred eighty-seven. Any loss to the
28 principal of the consolidated fund or the consolidated
29 pension fund that occurs because of any loan authorized by
30 this article shall be deducted only from the state
31 government moneys in such funds.

§21A-8A-11. Requirements of loan.

1 (a) A loan made by the board of investments from the
2 consolidated fund or the consolidated pension fund under
3 the provisions of this article will bear interest at a rate
4 determined by the board of investments not to exceed seven
5 percent per annum. At the discretion of the board of
6 investments, a loan made under the provisions of this article
7 may be renewed if prevailing economic and financial
8 conditions in the marketplace would permit such renewal
9 to be prudently made: *Provided*, That any such renewal
10 notes shall not be issued by the commissioner which would
11 mature after the date on which the original notes would
12 have otherwise matured.
13 (b) The date of maturity of notes issued by the
14 commissioner shall, in all cases, be determined by the board
15 of investments, consistent with its fiduciary
16 responsibilities.

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

1 (a) The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed two hundred sixty million dollars in the
4 aggregate principal amount outstanding.

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

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

§21A-8A-14. Termination.

1 The authority of the board of investments to make loans
2 under this article expires on the thirty-first day of
3 December, one thousand nine hundred eighty-seven.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Reene W. Wiggins

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originated in the Senate.

In effect from passage.

Todd C. Wilkins

Clerk of the Senate

Donald L. Hopp

Clerk of the House of Delegates

Barry T. Tamm

President of the Senate

Robert C. Allen

Speaker House of Delegates

The within *approved* this the *28th*
March
 day of 1987.

Arthur A. Hanes, Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/87

Time 3:24 p.m.

RECEIVED

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ATTORNEY GENERAL
WASHINGTON, D.C.