

No. 750

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 750  
*(Originating in the*  
*Committee on Finance)*  
(By Senator Committee on Finance)



PASSED March 14, 1987  
In Effect from Passage



**ENROLLED**  
**Senate Bill No. 750**

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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 assess-  
ments.**

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.

*Bruce Weisman*

Chairman Senate Committee

*Bernard V. Kelly*

Chairman House Committee

Originated in the Senate.

In effect from passage.

*Todd C. Wilts*

Clerk of the Senate

*Donald L. Hoopp*

Clerk of the House of Delegates

*Barbara T. ...*

President of the Senate

*Robert ...*

Speaker House of Delegates

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

*Hubert H. ... Jr.*  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/23/87

Time 3:24 p.m.

RECEIVED

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