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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 105

(By Senator *Whitlow, et al*)



PASSED April 7, 1989

In Effect July 1, 1989 

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 105

(By SENATORS WHITLOW AND FELTON, *Original Sponsors*)

[Passed April 7, 1989; to take effect July 1, 1989.]

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 three-a, relating to the creation of an industrial access road fund and providing funding therefor; specifying purposes for which moneys from the fund may be used; requiring that counties and municipalities guarantee proposed projects; specifying the criteria upon which the highways commissioner is to base his decision to allocate funds; approval of department of highways of proposed industrial access highway; request for funds by resolution of governing body of county or municipality; consultation by the department of highways; placing industrial access roads under the state road system; restrictions on use of the fund; limits on amount of funds to be allocated; eligible items of construction and engineering; disbursements from the fund; and annual audit of the fund.

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 three-a, to read as follows:

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

1 (a) Any other provision of this code notwithstanding,
2 there is hereby created in the state treasury the
3 "industrial access road fund", hereinafter referred to
4 as "the fund." There shall be deposited into the fund
5 one half of one percent of all state tax collections
6 which are otherwise specifically dedicated by the
7 provisions of this code to the state road fund. At the
8 end of each fiscal year, all unused moneys in the fund
9 shall revert to the state road fund.

10 (b) The moneys in the fund shall be expended by the
11 department of highways for constructing and main-
12 taining industrial access roads within counties and
13 municipalities to industrial sites on which manufactur-
14 ing, processing or other similar establishments, includ-
15 ing publicly owned airports, are already constructed or
16 are under firm contract to be constructed. In the event
17 there is no industrial site already constructed or for
18 which the construction is under firm contract, a
19 county or municipality may guarantee to the depart-
20 ment of highways by bond or other acceptable device
21 that an industrial site will be constructed and, if no
22 industrial site, acceptable to the department of high-
23 ways, is constructed within the time limits of the
24 bond, such bond shall be forfeited.

§17-3A-2. Department of highways to determine construction of industrial access roads.

1 In determining whether or not to construct or
2 improve any industrial access road, and in determin-
3 ing the nature of the road to be constructed, the
4 department of highways shall base its decision on the
5 costs of the industrial access road in relation to the
6 volume and nature of the traffic to be generated as a
7 result of developing the industrial site within the total

8 industrial area. In making a decision on any industrial
9 site, the total volume of traffic to be generated shall be
10 considered in regard to the overall cost of the project.
11 The department of highways shall consult and work
12 closely with the governor's office of community and
13 industrial development in determining the use of
14 industrial access road funds.

15 Prior to a formal request for the use of moneys from
16 the fund to provide access to new or expanding
17 industrial sites, the location of the industrial access
18 road shall be submitted for approval of the department
19 of highways. The department of highways shall con-
20 sider the cost of the industrial access road as it relates
21 to the project's location and as it relates to the
22 possibility of future extensions of the road to serve
23 other possible industrial sites as well as the future
24 development of the surrounding area.

25 Prior to the allocation of moneys from the fund for
26 the construction or maintenance of an industrial
27 access road to an industry proposing to locate or
28 expand in a county or municipality, the governing
29 body of the county or municipality shall, by resolution,
30 request moneys from the fund and shall be responsible
31 for the preliminary negotiations with the industries
32 and other interested parties. The department of
33 highways shall be available for consultation with the
34 governing bodies of the counties or municipalities and
35 other interested parties, and may prepare surveys,
36 plans, engineering studies and cost estimates for the
37 proposed industrial access road.

**§17-3A-3. Industrial access roads to be part of state road
system.**

1 Any industrial access road constructed under this
2 article is a state local service road in the state road
3 system and shall thereafter be maintained in accor-
4 dance with the provisions of this chapter.

§17-3A-4. Restrictions on use of fund.

1 (a) The fund may not be used for the adjustment of
2 utilities or for the construction of industrial access

3 roads to schools, hospitals, libraries, armories, office
4 buildings, shopping centers, apartment buildings,
5 amusement facilities, government installations or
6 similar facilities, whether public or private. The fund
7 may not be used to construct industrial access roads on
8 private property.

9 (b) Moneys from the fund may not be allocated until
10 the governing body of the county or municipality
11 certifies to the department of highways that the
12 industrial site is constructed and operating or is under
13 firm contract to be constructed or operated, or upon
14 the presentation of acceptable surety in accordance
15 with section one of this article.

16 (c) Not more than three hundred thousand dollars of
17 unmatched moneys from the fund may be allocated
18 for use in any one county in any fiscal year. The
19 maximum amount of unmatched moneys which may
20 be allocated from the fund is ten percent of the capital
21 outlay of the designated industrial establishment. The
22 amount of unmatched funds allocated may be supple-
23 mented with additional matched moneys from the
24 fund, in which case the matched moneys allocated
25 from the fund may not exceed one hundred fifty
26 thousand dollars, to be matched equally from sources
27 other than the fund. The amount of matched moneys
28 which may be allocated from the fund over and above
29 the unmatched funds may not exceed five percent of
30 the capital outlay of the designated industrial site.

31 (d) Funds may only be allocated to those items of
32 construction and engineering which are essential to
33 providing an adequate facility to serve the anticipated
34 traffic. Funds may not be allocated for items such as
35 storm sewers, curbs, gutters and extra pavement
36 width unless necessary to extend or connect an
37 existing access road.

§17-3A-5. Disbursements from fund.

1 Any claim of a contractor or others, not otherwise
2 provided for, for labor done or for materials, services
3 or supplies furnished to the department of highways
4 pursuant to the provisions of this article, shall be

5 audited by the commissioner of the department of
6 highways. If the commissioner determines that the
7 claim is valid and correct, the commissioner shall issue
8 a requisition of the department upon the state auditor
9 therefor, showing the nature of the claim and specify-
10 ing whether the claim is for labor done or materials,
11 services or supplies furnished for the construction or
12 maintenance of state roads, or for other purposes, and
13 the auditor shall issue his warrant upon the state
14 treasurer therefor. The treasurer shall issue the
15 warrant to the person, firm or corporation entitled
16 thereto, out of the funds in the treasury provided for
17 that purpose. The cost of acquiring a right-of-way shall
18 be paid out of the fund.

§17-3A-6. Annual audit to be made of receipts and expenditures of fund.

1 The Legislature, acting through the joint committee
2 on government and finance, shall cause an annual
3 audit to be made by a resident independent certified
4 public accountant of all books, accounts and records
5 relating to all receipts and expenditures of the fund.
6 The commissioner shall make available to the inde-
7 pendent auditor or auditors performing the audit all of
8 the department's books, accounts and records pertain-
9 ing to all moneys received and expended. The auditor
10 or auditors performing the audit shall make available
11 annually the audit report with copies thereof to the
12 members of the Legislature, the governor, the com-
13 missioner of the department of highways, the secre-
14 tary of state, the state treasurer, the attorney general
15 and the state auditor. The audit report shall be
16 available to the public in the office of the secretary of
17 state.

18 The Legislature, acting through the joint committee
19 on government and finance, shall obtain the services
20 of a resident independent certified public accountant
21 for this purpose, the cost of which shall be payable out
22 of funds appropriated by the Legislature. Any audits of
23 the funds which have been made by any official
24 auditing agency of the United States government shall
25 be accepted in lieu of the state audit.

Enr. Com. Sub. For S. B. No. 105] 6

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

Fredrick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1989.

Judd C. Wells
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Sam T. Finley
.....
President of the Senate

Bob Clark
.....
Speaker House of Delegates

The within *is approved* this the *25th*
day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/4/89

Time 4:37