WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

ENROLLED

Committee Substitute for
SENATE BILL NO. 258

(By Senator WHITLOW, ET AL.)

PASSED March 9, 1995

In Effect 90 days from Passage
AN ACT to amend and reenact sections one, two, four, five and six, article three-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 or her decision to allocate funds; approval of division of highways of proposed industrial access highway; request for funds by resolution of governing body of county or municipality; consultation by the division of highways; restrictions on use of the fund; limits on amount of funds to be allocated; disbursements from the fund; and annual audit of the fund.

Be it enacted by the Legislature of West Virginia:
That sections one, two, four, five and six, article three-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

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

(a) Any other provision of this code notwithstanding, there is hereby created in the state treasury the “industrial access road fund”, hereinafter referred to as “the fund”. There shall be deposited into the fund three fourths of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the state road fund or such percentage of those tax collections that will produce three million dollars for each fiscal year. At the end of each fiscal year, all unused moneys in the fund shall revert to the state road fund.

(b) The moneys in the fund shall be expended by the division of highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, distribution, processing or other economic development activities, including publicly owned airports, are already constructed or are under firm contract to be constructed. In the event there is no industrial site already constructed or for which the construction is under firm contract, a county or municipality may guarantee to the division of highways by bond or other acceptable device that an industrial site will be constructed and if no industrial site acceptable to the division of highways is constructed within the time limits of the bond, such bond shall be forfeited.

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

In determining whether or not to construct or improve
any industrial access road and in determining the nature of the road to be constructed, the division of highways shall base its decision on the costs of the industrial access road in relation to the volume and nature of the traffic to be generated as a result of developing the industrial site within the total industrial area. In making a decision on any industrial site, the total volume of traffic to be generated shall be considered in regard to the overall cost of the project. The division of highways shall consult and work in cooperation with the West Virginia development office in determining the use of industrial access road funds.

Prior to a formal request for the use of moneys from the fund to provide access to new or expanding industrial sites, the location of the industrial access road shall be submitted for approval of the division of highways. The division of highways shall consider the cost of the industrial access road as it relates to the project’s location and as it relates to the possibility of future extensions of the road to serve other possible industrial sites as well as the future development of the surrounding area.

Prior to the allocation of moneys from the fund for the construction or maintenance of an industrial access road to an industry proposing to locate or expand in a county or municipality, the governing body of the county or municipality shall, by resolution, request moneys from the fund and shall be responsible for the preliminary negotiations with the industries and other interested parties. The division of highways shall be available for consultation with the governing bodies of the counties or municipalities and other interested parties and may prepare surveys, plans, engineering studies and cost estimates for the proposed industrial access road.

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

(a) The fund may not be used for the adjustment of utilities or for the construction of industrial access roads
to schools, hospitals, libraries, armories, shopping centers, apartment buildings, government installations or similar facilities, whether public or private. The fund may not be used to construct industrial access roads on private property.

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

(c) Not more than three hundred thousand dollars of unmatched moneys from the fund may be allocated for use in any one county in any fiscal year. The maximum amount of unmatched moneys which may be allocated from the fund is ten percent of the fair market value of the designated industrial establishment. The amount of unmatched funds allocated may be supplemented with additional matched moneys from the fund, in which case the matched moneys allocated from the fund may not exceed one hundred fifty thousand dollars, to be matched equally from sources other than the fund. The amount of matched moneys which may be allocated from the fund over and above the unmatched funds may not exceed five percent of the fair market value of the designated industrial site.

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

§17-3A-5. Disbursements from fund.

Any claim of a contractor or others, not otherwise
provided for, for labor done or for materials, services or
supplies furnished to the division of highways pursuant
to the provisions of this article shall be audited by the
commissioner of the division of highways. If the com-
missioner determines that the claim is valid and correct,
the commissioner shall issue a requisition of the division
upon the state auditor therefor, showing the nature of
the claim and specifying whether the claim is for labor
done or materials, services or supplies furnished for the
construction or maintenance of state roads, or for other
purposes, and the auditor shall issue his or her warrant
upon the state treasurer therefor. The treasurer shall
issue the warrant to the person, firm or corporation
entitled thereto out of the funds in the treasury provided
for that purpose. The cost of acquiring a right-of-way
shall be paid out of the fund.

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

The Legislature, acting through the joint committee on
government and finance, shall cause an annual audit to
be made by a resident independent certified public
accountant of all books, accounts and records relating to
all receipts and expenditures of the fund. The commis-
ioner shall make available to the independent auditor or
auditors performing the audit all of the division's books,
accounts and records pertaining to all moneys received
and expended. The auditor or auditors performing the
audit shall make available annually the audit report with
copies thereof to the members of the Legislature, the
governor, the commissioner of the division of highways,
the secretary of state, the state treasurer, the attorney
general and the state auditor. The audit report shall be
available to the public in the office of the secretary of
state.

The Legislature, acting through the joint committee on
government and finance, shall obtain the services of a
resident independent certified public accountant for this
purpose, the cost of which shall be payable out of funds appropriated by the Legislature. Any audits of the funds which have been made by any official auditing agency of the United States government shall be accepted in lieu of the state audit.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 17th day of March, 1995.

Governor