WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2254

(By Delegate Warner)

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Passed March 13, 1999

In Effect Ninety Days from Passage
AN ACT to amend and reenact section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article seventeen-a of said chapter; and to further amend said article by adding thereto two new sections, designated sections five-a and five-b, all relating to authorizing the commissioner of highways to fix and collect tolls for transit over authorized highway projects; pledging tolls as security for special obligation notes; uses and control of tolls; roads upon which tolls may be charged; and report to joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

That section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article seventeen-a of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections five-a and five-b, all to read as follows:
ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


In addition to all other duties, powers and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

1. Exercise general supervision over the state road program and the construction, reconstruction, repair and maintenance of state roads and highways;

2. Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways therein;

3. Conduct investigations and experiments, hold hearings and public meetings and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

4. Enter private lands to make inspections and surveys for road and highway purposes;

5. Acquire, in name of the department, by lease, grant, right of eminent domain or other lawful means, all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

6. Procure photostatic copies of any or all public records on file at the state capitol of Virginia which may be deemed necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the state of West Virginia, which photostatic copies, when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

7. Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which school shall be held in
conjunction with West Virginia University and may be held at
the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agree-
ments with proper authorities of other states and of the United
States relating to and regulating the use of roads and highways
with reference to weights and types of vehicles, registration of
vehicles and licensing of operators, military and emergency
movements of personnel and supplies and all other matters of
interstate or national interest;

(9) Classify and reclassify, locate and relocate, expressway,
trunkline, feeder and state local service roads, and designate by
number the routes within the state road system;

(10) Create, extend or establish, upon petition of any
interested party or parties or on the commissioner’s own
initiative, any new road or highway as may be found necessary
and proper;

(11) Exercise jurisdiction, control, supervision and author-
ity over local roads, outside the state road system, to the extent
determined by him or her to be expedient and practicable;

(12) Discontinue, vacate and close any road or highway, or
any part thereof, the continuance and maintenance of which are
found unnecessary and improper, upon petition and hearing, or
upon investigation initiated by the commissioner;

(13) Close any state road while under construction or repair
and provide a temporary road during the time of such construc-
tion or repair;

(14) Adjust damages occasioned by construction, recon-
struction or repair of any state road or the establishment of any
temporary road;

(15) Establish and maintain a uniform system of road signs
and markers;

(16) Fix standard widths for road rights-of-way, bridges and
approaches thereto and fix and determine grades and elevations
therefor;
(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement or maintenance;

(19) Acquire, establish, construct, maintain and operate, in the name of the department, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia state aeronautics commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any such municipality and upon such terms as may be agreeably arranged;

(22) Institute complaints before the public service commission or any other appropriate governmental agency relating to freight rates, car service and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies to enforce his or her orders, to compel compliance with requirements of law and to protect and preserve the state road and highway system or any part thereof;

(24) Make and promulgate rules and regulations for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;
Delegations and powers of the Department of Transportation and Public Facilities include:

- Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;
- Designate and define such construction and maintenance districts within the state road system as may be found expedient and practicable;
- Contract for the construction, improvement and maintenance of the roads;
- Have authority to comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau or agency thereof relating to plans, surveys, construction, reconstruction, improvement and maintenance of state roads and highways;
- Prepare budget estimates and requests;
- Establish a system of accounting covering and including all fiscal and financial matters of the department;
- Have authority to establish and advance a right-of-way acquisition revolving fund, a materials revolving fund and an equipment revolving fund;
- Enter into contracts and agreements with and cooperate in programs of counties, municipalities and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance and supervision of highways, roads, streets, and other travel ways when and to the extent determined by the department to be expedient and practical;
- Report, as provided by law, to the governor and the Legislature;
- Purchase materials, supplies and equipment required for the state road program and system;
- Dispose of all obsolete and unusable and surplus supplies and materials, which cannot be used advantageously
and beneficially by the department in the state road program, by transfer thereof to other governmental agencies and institutions by exchange, trade or sale thereof;

(36) Investigate road conditions, official conduct of department personnel and fiscal and financial affairs of the department and hold hearings and make findings thereon or on any other matters within the jurisdiction of the department;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the division of highways after the first day of May, one thousand nine hundred ninety-nine, that have been authorized by the provisions of section five-b, article seventeen-a of this chapter; and

(39) Take actions necessary to alleviate such conditions as the governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the department of highways.

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.


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

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

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

(c) The proceeds of any such notes pending their use or of notes which may be issued to renew or refund such notes;
(d) The proceeds of any insurance or letters of credit or similar arrangements undertaken in connection with the acquisition, construction or financing of such surface transportation improvements;

(e) The proceeds of any tolls, or portions of tolls, charged and collected pursuant to the provisions of sections five-a and five-b of this article that are designated by the commissioner as security for the payment of the principal of or interest on notes issued for the purposes described in section five-a of this article; and

(f) Any other amounts specifically designated for the purpose of paying any such costs, but only to the extent appropriated by the Legislature and paid from general revenues prior to such pledge or dedicated for such purpose by the Legislature from proprietary revenues of the state.

Any such pledge or assignment shall be valid and binding from the time it is made, and the lien of such pledge or assignment shall be enforceable and need not be perfected by delivery or any filing or further act. Such lien shall be valid against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge or assignment.

The commissioner may enter into an agreement or agreements with any trust company or with any bank having the power of a trust company, either within or outside of the state, as trustee for the holders of notes issued hereunder, setting forth therein such duties of the state and of the commissioner in respect of the acquisition and construction of surface transportation improvements, the conservation and application of all moneys, the insurance of moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the notes, as may be agreed upon with the original purchasers of such notes, and including therein provisions restricting the individual right of action of holders as is customary in such trust agreements to protect and enforce the rights and remedies of the trustee and the holders. All expenses incurred in carrying out such agreement may be treated as a part of the cost of construc-
§17-17A-5a. Use of tolls for construction, maintenance, repair and operating costs; use of tolls to pay special obligation notes.

For highway projects described in section five-b of this article that are constructed after the first day of May, one thousand nine hundred ninety-nine, the commissioner of highways is hereby authorized to fix, revise, charge and collect tolls for transit over the highway projects and the different parts or sections thereof. The tolls shall be fixed and adjusted so that the aggregate of tolls from the project or projects provide a fund sufficient with other revenues, if any, to pay: (1) The cost of constructing, maintaining, repairing and operating such project or projects; and (2) the principal of and the interest on any notes issued to finance the project or projects as the same shall become due and payable, and to create reserves for such purposes. The tolls shall not be subject to supervision or regulation by any other commission, board, bureau, department or agency of the state. The tolls, except such part thereof as may be necessary to pay such cost of construction, maintenance, repair and operation and to provide such reserves therefor as may be provided for in the notes or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in the notes or the trust agreement in a sinking fund which is hereby pledged to, and charged with the payment of: (1) The interest upon such notes as such interest shall fall due; (2) the principal of such notes as the same shall fall due; (3) the necessary charges of paying agents for paying principal and interest; and (4) the redemption price or the purchase price of notes retired by accelerated payment or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the notes or of the trust agreement. The moneys in the sinking fund, less such reserve as may be provided for in the notes or trust agreement, if not used within a reasonable time for the purchase of notes for cancellation as above provided, shall be applied to the redemption of the notes at the redemption price then applicable.
§17-17A-5b. Designation of class of toll roads.

(a) The commissioner may fix and charge tolls on any road which meets the following criteria:

1. The road is a fully controlled access, four lane highway;
2. The road extends from the border of West Virginia and is a continuation of a fully controlled access four lane highway in the adjacent state; and
3. The adjacent state charges tolls on its portion of the highway immediately adjacent to West Virginia; and
4. The West Virginia portion of the highway connects to another fully controlled access four lane highway in West Virginia.

(b) Not less than one hundred eighty days prior to the final decision of the commissioner to charge tolls on any road described in subsection (a) of this section, the commissioner shall provide a report to the joint committee on government and finance setting forth:

1. The location and a description of the road;
2. The provisions of any special obligation notes intended by the commissioner to be secured in whole or in part by tolls charged on the road and any related trust agreements;
3. The anticipated amount of tolls to be charged and the duration of time the commissioner expects tolls to be charged on the road; and
4. Such other information that may be required by the joint committee on government and finance.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ approval this the _______ day of _______, 1999.