

H. B. 2254

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WEST VIRGINIA LEGISLATURE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2254**

(By Delegate Warner)



Passed March 13, 1999

In Effect Ninety Days from Passage

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## **ENROLLED**

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FOR

# **H. B. 2254**

(BY DELEGATE WARNER)

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[Passed March 13, 1999; in effect ninety days from passage.]

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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.**

**§17-2A-8. Powers, duties and responsibilities of commissioner.**

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

4        (1) Exercise general supervision over the state road  
5 program and the construction, reconstruction, repair and  
6 maintenance of state roads and highways;

7        (2) Determine the various methods of road construction  
8 best adapted to the various sections and areas of the state and  
9 establish standards for the construction and maintenance of  
10 roads and highways therein;

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

17        (4) Enter private lands to make inspections and surveys for  
18 road and highway purposes;

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

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

31        (7) Plan for and hold annually a school of good roads, of  
32 not less than three or more than six days' duration, for instruc-  
33 tion of his or her employees, which school shall be held in

34 conjunction with West Virginia University and may be held at  
35 the university or at any other suitable place in the state;

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

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

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

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

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

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

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

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

65 (16) Fix standard widths for road rights-of-way, bridges and  
66 approaches thereto and fix and determine grades and elevations  
67 therefor;

68 (17) Test and standardize materials used in road construc-  
69 tion and maintenance, either by governmental testing and  
70 standardization activities or through contract by private  
71 agencies;

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

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

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

84 (21) Provide traffic engineering services to municipalities  
85 of the state upon request of the governing body of any such  
86 municipality and upon such terms as may be agreeably ar-  
87 ranged;

88 (22) Institute complaints before the public service commis-  
89 sion or any other appropriate governmental agency relating to  
90 freight rates, car service and movement of road materials and  
91 equipment;

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

96 (24) Make and promulgate rules and regulations for the  
97 government and conduct of personnel, for the orderly and  
98 efficient administration and supervision of the state road  
99 program and for the effective and expeditious performance and  
100 discharge of the duties and responsibilities placed upon him or  
101 her by law;

102 (25) Delegate powers and duties to his or her appointees  
103 and employees who shall act by and under his or her direction  
104 and be responsible to him or her for their acts;

105 (26) Designate and define such construction and mainte-  
106 nance districts within the state road system as may be found  
107 expedient and practicable;

108 (27) Contract for the construction, improvement and  
109 maintenance of the roads;

110 (28) Have authority to comply with provisions of present  
111 and future federal aid statutes and regulations, including  
112 execution of contracts or agreements with and cooperation in  
113 programs of the United States government and any proper  
114 department, bureau or agency thereof relating to plans, surveys,  
115 construction, reconstruction, improvement and maintenance of  
116 state roads and highways;

117 (29) Prepare budget estimates and requests;

118 (30) Establish a system of accounting covering and includ-  
119 ing all fiscal and financial matters of the department;

120 (31) Have authority to establish and advance a right-of-way  
121 acquisition revolving fund, a materials revolving fund and an  
122 equipment revolving fund;

123 (32) Enter into contracts and agreements with and cooper-  
124 ate in programs of counties, municipalities and other govern-  
125 mental agencies and subdivisions of the state relating to plans,  
126 surveys, construction, reconstruction, improvement, mainte-  
127 nance and supervision of highways, roads, streets, and other  
128 travel ways when and to the extent determined by the depart-  
129 ment to be expedient and practical;

130 (33) Report, as provided by law, to the governor and the  
131 Legislature;

132 (34) Purchase materials, supplies and equipment required  
133 for the state road program and system;

134 (35) Dispose of all obsolete and unusable and surplus  
135 supplies and materials, which cannot be used advantageously

136 and beneficially by the department in the state road program, by  
137 transfer thereof to other governmental agencies and institutions  
138 by exchange, trade or sale thereof;

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

143 (37) Establish road policies and administrative practices;

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

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

**ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.**

**§17-17A-5. Security for notes; trust agreements.**

1 In connection with any issue of notes hereunder, the  
2 commissioner may pledge or assign, as security for the payment  
3 of the principal of or interest on such notes, any of the follow-  
4 ing:

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

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

14 (c) The proceeds of any such notes pending their use or of  
15 notes which may be issued to renew or refund such notes;

16 (d) The proceeds of any insurance or letters of credit or  
17 similar arrangements undertaken in connection with the  
18 acquisition, construction or financing of such surface transpor-  
19 tation improvements;

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

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

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

38 The commissioner may enter into an agreement or agree-  
39 ments with any trust company or with any bank having the  
40 power of a trust company, either within or outside of the state,  
41 as trustee for the holders of notes issued hereunder, setting forth  
42 therein such duties of the state and of the commissioner in  
43 respect of the acquisition and construction of surface transpor-  
44 tation improvements, the conservation and application of all  
45 moneys, the insurance of moneys on hand or on deposit, and the  
46 rights and remedies of the trustee and the holders of the notes,  
47 as may be agreed upon with the original purchasers of such  
48 notes, and including therein provisions restricting the individual  
49 right of action of holders as is customary in such trust agree-  
50 ments to protect and enforce the rights and remedies of the  
51 trustee and the holders. All expenses incurred in carrying out  
52 such agreement may be treated as a part of the cost of construc-

53 tion of the surface transportation improvements affected by the  
54 agreement.

**§17-17A-5a. Use of tolls for construction, maintenance, repair  
and operating costs; use of tolls to pay special  
obligation notes.**

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

**§17-17A-5b. Designation of class of toll roads.**

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

3 (1) The road is a fully controlled access, four lane highway;  
4 and

5 (2) The road extends from the border of West Virginia and  
6 is a continuation of a fully controlled access four lane highway  
7 in the adjacent state; and

8 (3) The adjacent state charges tolls on its portion of the  
9 highway immediately adjacent to West Virginia; and

10 (4) The West Virginia portion of the highway connects to  
11 another fully controlled access four lane highway in West  
12 Virginia.

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

18 (1) The location and a description of the road;

19 (2) The provisions of any special obligation notes intended  
20 by the commissioner to be secured in whole or in part by tolls  
21 charged on the road and any related trust agreements;

22 (3) The anticipated amount of tolls to be charged and the  
23 duration of time the commissioner expects tolls to be charged  
24 on the road; and

25 (4) Such other information that may be required by the joint  
26 committee on government and finance.

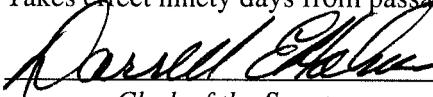
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

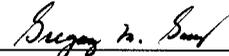
  
Chairman Senate Committee

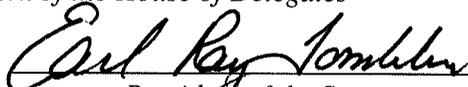
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

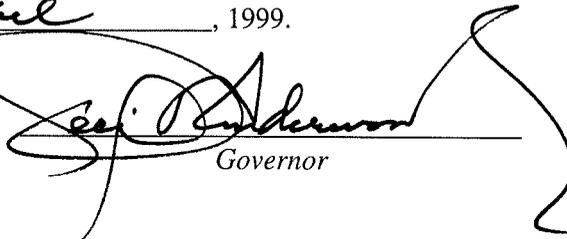
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 15<sup>th</sup>  
day of April, 1999.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/99

Time 2:35 pm