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WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 352

(SENATORS UNGER, FANNING, JENKINS,
PLYMALE, FOSTER, STOLLINGS, D. FACEMIRE AND
PREZIOSO, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 352

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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OFFICE OF THE CLERK
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AN ACT to amend and reenact §13-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-4-47 and §17-4-49 of said code; and to amend said code by adding thereto a new article, designated §17-28-1, §17-28-2, §17-28-3, §17-28-4, §17-28-5, §17-28-6, §17-28-7, §17-28-8, §17-28-9, §17-28-10, §17-28-11 and §17-28-12, all relating generally to the creation of the West Virginia Community Empowerment Transportation Act; authorizing county commissions to issue general obligation bonds for acquiring, maintaining, improving public roads and transportation facilities; giving counties authority to impose, administer, collect and enforce payment of voter-approved user fees to pay for or finance cost of transportation projects within their counties; defining certain terms; giving county commissions authority to issue special revenue bonds to finance transportation projects and including authority to issue refunding bonds; giving

authority to take other actions to finance and complete transportation projects; authorizing the Commissioner of Highways to establish procedures relating to review of transportation projects; making legislative findings; stating legislative purpose; requiring certain governmental entities seeking state funds for transportation projects to submit a transportation project plan to Commissioner of Highways; setting forth transportation project plan requirements; setting forth conditions for approval by the Commissioner of Highways; providing notice, advertisement and election requirements for user fees; providing for a comprehensive agreement for a transportation facility between the sponsoring governmental entity and the Division of Highways; establishing the requirements for qualifying a transportation facility as a public improvement; authorizing information sharing; requiring a bond covering the division for improvements to highway facilities required as a result of development; providing that transportation projects are awarded by competitive bidding and subject to prevailing wages; authorizing municipal utilities and public service districts to include into rates costs borne by the utility in contributing moneys or dedicate revenue to transportation project costs; and regulating access from properties to and from state roads.

Be it enacted by the Legislature of West Virginia:

That §13-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17-4-47 and §17-4-49 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §17-28-1, §17-28-2, §17-28-3, §17-28-4, §17-28-5, §17-28-6, §17-28-7, §17-28-8, §17-28-9, §17-28-10, §17-28-11 and §17-28-12 all to read as follows:

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-2. Purposes for which bonds may be issued.

1 Debt may be incurred and bonds issued under this
2 article for the purpose of acquiring, constructing and
3 erecting, enlarging, extending, reconstructing or improv-
4 ing any building, work, utility or undertaking, or for
5 furnishing, equipping and acquiring or procuring the
6 necessary apparatus for any building, work, improvement
7 or department, or for establishing and maintaining a
8 library or museum for the public use, or a building or
9 structure for educational purposes, or acquiring a recre-
10 ation park for the public use, or for acquiring, construct-
11 ing, furnishing, equipping and maintaining civic arenas,
12 auditoriums, exhibition halls and theaters, or for other
13 similar corporate purpose, or for the acquiring, construct-
14 ing, maintaining, repairing, improving public roads and
15 transportation facilities, for which the political division is
16 authorized to levy taxes or expend public money. But no
17 bonds shall be issued for the purpose of providing funds
18 for the current expenses of any body or political division.
19 Interest accruing during the construction period, that is to
20 say, the time when an improvement is under construction
21 and six months thereafter, shall be deemed a part of the
22 cost of the improvement, and shall not be deemed current
23 expenses. All engineering and inspection costs, including
24 a proper proportion of the compensation, salaries and
25 expenses of the engineering staff of the political division
26 properly chargeable to any work or improvements, as
27 determined by the governing body, or the estimated
28 amount of such costs, shall be deemed part of the cost of
29 an improvement. All costs and estimated costs of the
30 issuance of bonds shall be deemed a part of the cost of the
31 work or improvement, or of the property, or of the carry-
32 ing out of the purposes for which such bonds are to be
33 issued. The power to acquire or construct any building,
34 work or improvement as herein provided shall be deemed
35 to include the power to acquire the necessary lands, sites
36 and rights-of-way therefor.

37 Bonds may also be issued by any municipality having a
38 population of fifty thousand or more or by any county for
39 the purpose of acquiring land and constructing a building
40 or buildings for use and occupancy as a college. The
41 proposal for such a bond issue shall contain a provision
42 that there shall be created a commission or committee for
43 the purpose of operating the building or buildings and for
44 renting the same for an amount sufficient to pay the
45 interest and sinking fund on the bonds proposed to be
46 issued, and shall contain a further provision that in the
47 event a sufficient amount is not realized from rent or rents
48 for the purpose of meeting the debt service, then the city
49 or county shall lay a levy for such purpose in an amount
50 sufficient within the constitutional and statutory limita-
51 tion to pay the interest and principal on such bonds as the
52 same become due and payable. The proposal may also
53 contain a provision that when the bonds and the interest
54 thereon shall have been paid, then the title to the land and
55 the building or buildings situated thereon may be trans-
56 ferred to the college to which the same have been rented.

CHAPTER 17. ROADS AND HIGHWAYS

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-47. Access from commercial, etc., property and subdivisions to highways – Purposes of regulation; right of access; provisions inapplicable to controlled-access facilities; removal of unauthorized access; bond for access.

1 (a) Reciprocal access between state highways and real
2 property used or to be used for commercial, industrial or
3 mercantile purposes and reciprocal access between state
4 highways and real property that is subdivided into lots is
5 a matter of public concern and shall be regulated by the
6 Commissioner of Highways to achieve the following
7 purposes:

8 (1) To provide for maximum safety of persons traveling
9 upon, entering or leaving state highways;

10 (2) To provide for efficient and rapid movement of
11 traffic upon state highways;

12 (3) To permit proper maintenance, repair and drainage
13 of state highways; and

14 (4) To facilitate appropriate public use of state high-
15 ways.

16 (b) Except where the right of access has been limited by
17 or pursuant to law, every owner or occupant of real
18 property abutting upon any existing state highway has a
19 right of reasonable means of ingress to and egress from
20 such state highway consistent with those policies ex-
21 pressed in subsection (a) of this section and any regula-
22 tions issued by the commissioner under section forty-eight
23 of this article.

24 (c) If the construction, relocation or reconstruction of
25 any state highway, to be paid for, in whole or in part, with
26 federal or state road funds, results in the abutment of real
27 property as defined in subsection (a) of this section on the
28 state highway that did not previously abut on it, no rights
29 of direct access shall accrue because of such abutment.
30 However, the commissioner may authorize or limit access
31 from an abutting property if the property is compatible
32 with the policies stated in subsection (a) of this section and
33 any regulations issued by the commissioner as authorized
34 by section forty-eight of this article.

35 (d) The policies expressed in this section are applicable
36 to state highways generally and shall in no way limit the
37 authority of the Commissioner of Highways to establish
38 controlled-access facilities under sections thirty-nine
39 through forty-six, inclusive, of this article.

40 (e) Any unauthorized access to a state highway may be
41 removed, blocked, barricaded or closed in any manner
42 considered necessary by the commissioner to protect the
43 safety of the public and enforce the policies of this section
44 and sections forty-eight, forty-nine and fifty of this
45 article.

46 (f) As a condition of granting access to a state highway,
47 the commissioner may require the owners of real property
48 developed or to be developed to provide a bond in an
49 amount the commissioner determines necessary to com-
50 pensate the division for improvements to highway facili-
51 ties required as a result of the development. This bond
52 shall be held a maximum of ten years: Provided, that no
53 bond shall be required for any residential development
54 consisting of one hundred homes or less.

**§17-4-49. Same – Points of commercial, etc.; access to comply;
plans, objections and procedures for new points;
review of and changes in existing points; commis-
sioner’s preliminary determination.**

1 (a) No new points of access to and from state highways
2 from and to real property used or to be used for commer-
3 cial, industrial or mercantile purposes may be opened,
4 constructed or maintained without first complying with
5 this section and sections forty-seven and forty-eight of this
6 article. Access points opened, constructed or maintained
7 without compliance are unauthorized.

8 (b) Plans for any new point of access shall be submitted
9 to the Commissioner of Highways directly and the follow-
10 ing rules shall apply:

11 (1) Notice of the proposed new point of access shall be
12 filed with the commissioner, along with a plan of the
13 proposed new point of access.

14 (2) The commissioner shall review the plan to ensure
15 compliance with the policies stated in section forty-seven

16 of this article and with any regulations issued by the
17 commissioner under section forty-eight of this article.

18 (3) If the commissioner objects to a plan, he or she shall
19 reduce his or her objections to the proposed new point of
20 access to writing and promptly furnish notice of the
21 objection to the owner or owners of the real property
22 affected and advise the owner or owners of the right to
23 demand a hearing on the proposed plan and the objections.
24 If a plan is not objected to within six weeks from the time
25 it is filed with the commissioner, it is considered approved
26 by the commissioner.

27 (4) In any case where the commissioner objects to the
28 proposed new point of access, the owner or owners of the
29 real property affected shall have reasonable opportunity
30 for a hearing on such objections.

31 (c)(1) Existing points of access to and from state high-
32 ways from and to real property used for commercial,
33 industrial or mercantile purposes may be reviewed by the
34 commissioner to determine whether such points of access
35 comply with the policies stated in section forty-seven of
36 this article and with any regulations issued by the com-
37 missioner under section forty-eight of this article. The
38 commissioner may direct reasonable changes in existing
39 points of access to and from state highways from and to
40 property used for commercial, industrial or mercantile
41 purposes if he or she determines from accident reports or
42 traffic surveys that the public safety is seriously affected
43 by such points of access and that such reasonable changes
44 would substantially reduce the hazard to public safety.
45 When such changes require construction, reconstruction or
46 repair, such work shall be done at state expense as any
47 other construction, reconstruction or repair.

48 (2) If the commissioner makes a preliminary determina-
49 tion that any changes should be made, the following rules
50 apply:

51 (A) The commissioner shall reduce his or her preliminary
52 determination to writing and promptly furnish notice of
53 such preliminary determination to the owner or owners of
54 the real property affected and of their right to demand a
55 hearing on the preliminary determination. The commis-
56 sioner's notice shall include a description of suggested
57 changes suitable for reducing the hazard to the public
58 safety.

59 (B) In any case where the commissioner makes a prelimi-
60 nary determination that any changes should be made, the
61 owner or owners of the real property affected shall have
62 reasonable opportunity for a hearing on the preliminary
63 determination.

**ARTICLE 28. WEST VIRGINIA COMMUNITY EMPOWERMENT TRANSPOR-
TATION ACT.**

§17-28-1. Short title.

1 This article may be known and referred to as the "West
2 Virginia Community Empowerment Transportation Act."

§17-28-2. Legislative findings.

1 The Legislature finds as follows:

2 (1) That a broad and unified system should be continued
3 and persistently upgraded by state law for financing,
4 planning, designing, constructing, expanding, improving,
5 maintaining and operating the public road system and
6 transportation facilities that together comprise the
7 transportation infrastructure of this state;

8 (2) That, in addition to traditional means and methods of
9 putting transportation infrastructure into place, a signifi-
10 cant contribution to a system as described in subdivision
11 one of this section can be made by public-private partner-
12 ships that will assist federal, state and local governments
13 in their efforts to meet the evolving needs of governmental

14 entities, industry, labor, commerce, and, most importantly,
15 the citizens of this state;

16 (3) That available public funding necessary to provide
17 for an adequate or more than adequate transportation
18 infrastructure have not kept pace with the needs of the
19 governmental entities that are charged with financing,
20 developing and maintaining an optimal transportation
21 infrastructure in this state;

22 (4) That investment in transportation infrastructure by
23 private entities should be facilitated, and innovative
24 financing mechanisms should be encouraged and devel-
25 oped, so as to utilize private capital and other funding
26 sources to supplement governmental actions taken in
27 support of transportation projects, to the end that the
28 financial and technical expertise and other experience of
29 private entities regarding the development of transporta-
30 tion facilities may be garnered and put into service on
31 behalf of the state;

32 (5) That public and private entities should have a clear
33 and well-designed statutory framework to work within
34 that allows for flexibility in partnering with each other
35 and developing transportation infrastructure projects; and

36 (6) This article should not be limited by any rule of strict
37 construction, but should be liberally construed to effect
38 the legislative purpose of conceiving and creating a
39 modern transportation infrastructure under the leadership
40 and guidance of governmental entities, with corresponding
41 and cooperative assistance, under appropriate circum-
42 stances, by public-private partnerships, inuring to the
43 benefit and prosperity of the state and the welfare of its
44 citizens.

§17-28-3. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (1) "Affected local jurisdiction" means any county or
4 incorporated municipality of this state in which all or any
5 part of a transportation facility is or will be located, or
6 any other local public entity, including, but not limited to,
7 a public service district or highway authority or highway
8 association that is directly affected by a transportation
9 project.

10 (2) "Commissioner" means the Commissioner of High-
11 ways who is the chief executive officer of the Division of
12 Highways.

13 (3) "Department" means the West Virginia Department
14 of Transportation.

15 (4) "Division" refers to the Division of Highways, a
16 division within the West Virginia Department of Trans-
17 portation.

18 (5) "Governmental entity" means any county, municipal-
19 ity, or other governmental unit or political subdivision of
20 the State.

21 (6) "Highway authority" or "highway association"
22 means any entity created by the Legislature for the
23 advancement and improvement of the state road and
24 highway system, including, but not limited to, the New
25 River Parkway Authority, Midland Trail Scenic Highway
26 Association, Shawnee Parkway Authority, Corridor G
27 Regional Development Authority, Coalfields Expressway
28 Authority, Robert C. Byrd Corridor H Highway Authority,
29 West Virginia 2 and I-68 Authority, Little Kanawha River
30 Parkway Authority, King Coal Highway Authority, Coal
31 Heritage Highway Authority, Blue and Gray Intermodal
32 Highway Authority and the West Virginia Eastern Pan-
33 handle Transportation Authority or, if an authority is
34 abolished, any entity succeeding to the principal functions
35 of the highway authority or to whom the powers given to
36 the highway authority are given by law.

37 (7) "Private entity" means any natural person, corpora-
38 tion, general partnership, limited liability company,
39 limited partnership, joint venture, business trust, public
40 benefit corporation, nonprofit entity or other business
41 entity.

42 (8) "Project costs" means capital costs, costs of financ-
43 ing, planning, designing, constructing, expanding, improv-
44 ing, maintaining or controlling a transportation facility,
45 the cost of land, equipment, machinery, installation of
46 utilities and other similar expenditures and all other
47 charges or expenses necessary, appurtenant or incidental
48 to the foregoing.

49 (9) "Sponsor" or "project sponsor" means a governmen-
50 tal entity proposing a transportation project.

51 (10) "Public-private partnership" means a consortium
52 that includes the Division of Highways, a governmental
53 entity, a highway authority or any combination thereof,
54 together with a private entity or entities, which proposes
55 to finance, acquire, plan, design, construct, expand,
56 improve, maintain or control a transportation facility.

57 (11) "Public service district" means a public corporation
58 or political subdivision of this state created pursuant to
59 section two, article thirteen-a, chapter sixteen of this code.

60 (12) "Revenue" means all revenue, income, earnings, user
61 fees, lease payments or other service payments arising out
62 of or in connection with supporting the development or
63 operation of a transportation facility, including, without
64 limitation, money received as grants or otherwise from the
65 United States of America, from any public entity or from
66 any agency or instrumentality of the foregoing in aid of
67 such transportation project, moneys generated by way of
68 contract, pledge, donation, bequest or bonds and moneys
69 generated by taxes which are authorized to be assessed
70 and levied by the Legislature or another governmental
71 entity.

72 (13) "Secretary" means the Cabinet Secretary of the
73 West Virginia Department of Transportation.

74 (14) "Transportation facility" means a public highway,
75 road, bridge, tunnel, overpass, building, structure, airport,
76 vehicle parking facility, riverport facility, rail facility, or
77 intermodal facility used for the transportation of persons
78 or goods.

79 (15) "Transportation project" means any project to
80 acquire, design, construct, expand, renovate, extend,
81 enlarge, increase, equip, improve, maintain or operate a
82 transportation facility in this state for which a govern-
83 mental entity is permitted by law to expend public funds
84 but does not include any project that would otherwise be
85 under the authority of the Public Port Authority, the
86 Aeronautics Commission or the Parkways, Economic
87 Development and Tourism Authority.

88 (16) "User fee" means a rate, toll, or fee imposed by an
89 operator for use of all or a part of a transportation facility
90 authorized in section five of this article.

91 (17) "Utility" means a privately, publicly or coopera-
92 tively owned line, facility or system for producing, trans-
93 mitting or distributing communications, cable television,
94 power, electricity, light, heat, gas, oil, crude products,
95 water, steam, waste, storm water not connected with
96 highway drainage, or any other similar commodity,
97 including fire or police signal system or street lighting
98 system, which directly or indirectly serves the public.

**§17-28-4. Governmental entities to submit transportation
project requests to commissioner of highways
generally; commissioner's powers and duties to
implement the act; transportation project plan
requirements; Division of Highways plan review;
proprietary information.**

1 (a) In addition to any other powers which a governmen-
2 tal entity may now have, a governmental entity seeking
3 state funds for a transportation project may submit a
4 transportation project plan to the commissioner as a
5 project sponsor. The commissioner shall review the
6 transportation project plan and the available financing for
7 the project and shall encourage project sponsors to pursue
8 alternative funding sources. Alternative funding sources
9 may include, without limitation, utilization of tax incre-
10 ment financing, issuance of general obligations bonds,
11 special revenue bonds or anticipation notes, cooperation
12 with other governmental units, dedicated user fees and
13 public-private partnerships.

14 (b) To implement and carry out the intent of this article,
15 the commissioner shall propose legislative rules in accor-
16 dance with article three, chapter twenty-nine-a of this
17 code. The commissioner shall establish comprehensive,
18 uniform guidelines in order to evaluate any transportation
19 project plan. The guidelines shall address the following:

20 (1) The use of alternative sources of funding which could
21 finance all or a portion of the transportation project;

22 (2) The transportation needs of the region;

23 (3) Project costs;

24 (4) Whether dedicated revenues from a project sponsor
25 are offered for project costs;

26 (5) Available federal and state funds;

27 (6) The degree to which the transportation project
28 impacts other infrastructure projects and implements
29 cost-effective and efficient development of transportation
30 projects with other infrastructure improvements;

31 (7) The cost effectiveness of the transportation project as
32 compared with alternatives which achieve substantially
33 the same economic development benefits;

34 (8) The project sponsor's ability to operate and maintain
35 the transportation project or finance the continued
36 operation and maintenance of the transportation project
37 if approved;

38 (9) The degree to which the transportation project
39 achieves other state or regional planning goals;

40 (10) The estimated date upon which the transportation
41 project could commence if funding were available and the
42 estimated completion date of the transportation project;
43 and

44 (11) Other factors the commissioner considers necessary
45 or appropriate to accomplish the purpose and intent of
46 this article.

47 (c) The commissioner shall create a transportation
48 project plan application form that is to be used by project
49 sponsors requesting funding assistance from the state for
50 transportation projects. The application must require a
51 preliminary proposal that includes:

52 (1) The location of the transportation project and
53 affected local jurisdictions;

54 (2) The estimated total project cost of the transportation
55 project;

56 (3) The amount of funding assistance desired from the
57 Division of Highways and the specific uses of the funding;

58 (4) Other sources of funding available for the transporta-
59 tion project;

60 (5) Information demonstrating the need for the transpor-
61 tation project and documentation that the proposed
62 funding of the project is the most economically feasible
63 alternative to completing the transportation project;

64 (6) A timeline for activities to be performed by the
65 project sponsors;

66 (7) A statement setting forth the financing of the project
67 costs, including the sources of the funds and identification
68 of any dedicated revenues, proposed debt, tax increment
69 financing plans, issuance of bonds or notes, in-kind
70 services or equity investment of project sponsors;

71 (8) A list of utilities that can be constructed in coordina-
72 tion with the transportation project and a statement of the
73 plans to accommodate those utilities;

74 (9) Project sponsor contact information;

75 (10) A statement of the projected availability and use of
76 dedicated revenues from user fees, lease payments, taxes,
77 and other service payments over time; and

78 (11) Other information as the commissioner considers
79 necessary to enable the review of the transportation
80 project.

81 (12) The commissioner may also require the submission
82 of geographic information system mapping of the trans-
83 portation project and electronic filing of the preliminary
84 proposal.

85 (d) If a preliminary proposal is approved by the commis-
86 sioner for detailed review, the division will advise the
87 project sponsors of the estimated cost of a detailed review.
88 The project sponsor must deposit a bond with the commis-
89 sioner, irrevocable letter of credit or other acceptable
90 instrument guaranteeing payment by the project sponsors
91 of the actual costs incurred by the division to perform a
92 detailed transportation project plan review, to the maxi-
93 mum of the estimated costs, before a detailed review may
94 begin.

95 (e) In evaluating any transportation project, the commis-
96 sioner may rely upon internal staff reports or the advice of
97 outside advisors or consultants.

98 (f) The commissioner is to encourage collaboration
99 among project sponsors, affected local jurisdictions and
100 private entities through intergovernmental agreements
101 and public-private partnerships including, without
102 limitation, recommending the amounts and sources of
103 funding which affected local jurisdictions or project
104 sponsors may pursue, which state transportation or
105 infrastructure agency or agencies may be consulted for
106 appropriate investment of public funds and alternatives to
107 carry out the intent of this article.

108 (g) After a detailed review, the commissioner may
109 recommend to the Governor those transportation projects
110 which are a prudent and resourceful expenditure of public
111 funds. No proposal may be recommended or approved
112 which is inconsistent with the division's twenty-year long
113 range plans or other transportation plans.

114 (h) The commissioner must prepare and publish an
115 annual report of activities and accomplishments and
116 submit it to the Governor and to the Joint Committee on
117 Government and Finance on or before December 15 of
118 each year. The commissioner must also prepare and
119 submit an annual report to the Governor and the Legisla-
120 ture outlining alternative road funding models and
121 incentive packages. The report may also recommend
122 legislation relating to third-party donation of funds,
123 materials or services, federal credit instruments, secured
124 loans, federal Transportation Infrastructure Finance and
125 Innovation Act funds, state infrastructure banks (SIBS),
126 private activity bonds or other matters respecting trans-
127 portation considered by the commissioner to be in the
128 public interest. The commissioner may consider alterna-
129 tives to the current system of taxing highway use through
130 motor vehicle fuel taxes including, without limitation,
131 pilot programs for testing technology and methods for the
132 collection of mileage fees.

133 (i) All documents maintained pursuant to this article
134 shall be subject to the requirements of chapter twenty-
135 nine-b of this code.

§17-28-5. Powers conferred on counties; special charges for transportation facilities and projects; election on ordinance for user fees; form of ballots; procedure.

1 (a) In addition to any other powers which a county may
2 now have, each county, by and through its county commis-
3 sion, shall have the following powers:

4 (1) To finance one or more transportation projects, or
5 additions thereto, which shall be located within the
6 county;

7 (2) To impose by ordinance reasonable user fees upon
8 users of transportation facilities within a county to be
9 collected in the manner specified in the ordinance, includ-
10 ing, but not limited to, paying the costs of one or more
11 transportation projects, the payment of debt service on
12 any revenue bonds issued under section six of this article.
13 The ordinance shall provide for the administration,
14 collection and enforcement of the fee; and

15 (3) To establish a special transportation fund as a
16 separate fund into which all user fees and other revenues
17 designated by the county commission shall be deposited,
18 and from which all transportation project costs shall be
19 paid, which may be assigned to and held by a trustee for
20 the benefit of bondholders if special transportation
21 revenue bonds are issued by the county commission under
22 section six of this article.

23 (b) No ordinance imposing a user fee authorized by this
24 section is effective until it is ratified by a majority of the
25 legal votes cast by the qualified voters of the county at a
26 primary or general election. The ballot question must set

27 forth the amount of the fee, the manner in which it will be
28 imposed, the general use to which the proceeds of the fee
29 will be put, a description of the transportation project to
30 be financed with the fee, whether revenue bonds will be
31 issued, and if bonds are to be issued, the estimated term
32 and amount of the revenue bonds. The county commission
33 may include additional information in the notice. Notice
34 of the election shall be provided and the ballots shall be
35 printed as set forth in subsection (c) of this section.

36 (c) On the election ballots shall be printed the following:

37 Shall the County Commission of (name of county) be
38 authorized to adopt an ordinance to establish a fee for the
39 use of the (transportation facility description) in accor-
40 dance with section five, article twenty-eight, chapter
41 seventeen of the code of West Virginia?

42 Yes

43 No

44 (d) If a majority of the legal votes cast upon the question
45 be for the ordinance, the provisions of the ordinance
46 become effective upon the date the results of the election
47 are declared. If a majority of the legal votes cast upon the
48 question be against the ordinance, the ordinance shall not
49 take effect.

50 (e) Subject to the provisions of subsection (d) of this
51 section, an election permitted by this section may be
52 conducted at any regular primary or general election as
53 the county commission in its order submitting the same to
54 a vote may designate.

55 (f) Notice of an election pursuant to this section shall be
56 given by publication of the order calling for a vote on the
57 question as a Class II-0 legal advertisement in compliance
58 with the provisions of article three, chapter fifty-nine of

59 this code and the publication area for the publication shall
60 be the county in which the election is to be conducted.

61 (g) Any election permitted by this section shall be held
62 at the voting precincts established for holding primary or
63 general elections. All of the provisions of the general
64 election laws of this state applicable to primary or general
65 elections not inconsistent with the provisions of this
66 section shall apply to voting and elections authorized by
67 this section.

68 (h) Before an election is held, the county commission
69 shall obtain written confirmation from the commissioner
70 approving the user fee and a transportation project plan
71 within the county that was reviewed by commissioner
72 under section four of this article.

**§17-28-6. Issuance of transportation project revenue bonds by
county.**

1 (a) The county commission, in its discretion, may use the
2 moneys in such special transportation fund established
3 under section five of this article to finance the costs of
4 transportation projects on a cash basis. Every county
5 commission is empowered and authorized to issue, in the
6 manner prescribed by this section, special revenue bonds
7 secured by user fees authorized by section five of this
8 article to finance or refinance all or part of a transporta-
9 tion project and pledge all or any part of the user fees for
10 the payment of the principal of and interest on such bonds
11 and the reserves therefor. Bonds issued for any of the
12 purposes stated in this section shall contain in the title or
13 subtitle thereto the word "transportation", in order to
14 identify the same.

15 (b) The transportation revenue bonds may be authorized
16 and issued by the county commission to finance or refi-
17 nance, in whole or in part, public transportation projects
18 in an aggregate principal amount not exceeding the

19 amount which the county commission determines can be
20 paid as to both principal and interest and reasonable
21 margins for a reserve therefor from user fee revenues. A
22 county commission issuing transportation revenue bonds
23 shall establish a fund to deposit user fee revenues. The
24 county commission shall thereafter deposit all revenues
25 pledged to the payment of principal and interest of
26 transportation revenue bonds into the fund.

27 (c) The issuance of transportation revenue bonds may be
28 authorized by an order of the county commission. The
29 transportation revenue bonds shall: (1) Bear a date or
30 dates; (2) mature at a time or times not exceeding forty
31 years from their respective dates; (3) be in a denomination
32 not more than a maximum denomination fixed by the
33 county commission; (4) be in a registered form with
34 exchangeability and interchangeability privileges; (5) be
35 payable in a medium of payment and at a place or places
36 within or without the state; (6) be subject to such terms
37 and prices for redemption, if any, as approved by the
38 county commission; (7) bear a rate of interest that is not
39 more than a maximum rate fixed by the county commis-
40 sion; and (8) may have such other terms and provisions as
41 determined by the county commission. The transportation
42 revenue bonds shall be signed by the president of the
43 county commission under the seal of the county commis-
44 sion, attested by the clerk of the county commission.
45 Transportation revenue bonds may be sold in a manner as
46 the county commission determines is for the best interests
47 of the county.

48 (d) The county commission may enter into: (1) Trust
49 agreements with banks or trust companies within or
50 without the state and in trust agreements or orders
51 authorizing the issuance of bonds; (2) valid and legally
52 binding covenants with the holders of the transportation
53 revenue bonds as to the custody, safeguarding and disposi-
54 tion of the proceeds of the transportation revenue bonds,

55 the moneys in the user fee revenue fund, sinking funds,
56 reserve funds or any other moneys or funds; as to the rank
57 and priority, if any, or different issues of transportation
58 revenue bonds by the county commission under the
59 provisions of this section; (3) agreements as to such
60 provisions as payment, term, security, default and remedy
61 provisions as the county commission shall consider
62 necessary or desirable; and (4) agreements as to any other
63 matters or provisions which are considered necessary and
64 advisable by the county commission in the best interests of
65 the county and to enhance the marketability of such
66 transportation revenue bonds.

67 (e) The transportation revenue bonds are negotiable
68 instruments under the Uniform Commercial Code of this
69 state and are not obligations or debts of the state or of the
70 county issuing the bonds and the credit or taxing power of
71 the state or county may not be pledged therefor, but the
72 transportation revenue bonds may be payable only from
73 the revenue pledged therefor as provided in this article.

74 (f) A holder of transportation revenue bonds has a lien
75 against the user fee revenues and the user fee revenue fund
76 for payment of the transportation revenue bond and the
77 interest thereon and may bring suit to enforce the lien.

78 (g) A county commission may issue and secure additional
79 bonds payable out of the user fee revenues and the user fee
80 revenue fund which bonds may rank on a parity with, or
81 be subordinate or superior to, other bonds issued by the
82 county commission and payable from the user revenue fee
83 fund.

84 (h) For the purposes of this section, a county commission
85 is authorized to sue and be sued; make contracts and
86 guarantees; incur liabilities; borrow or lend money for any
87 time period considered advisable by the county commis-
88 sion; sell, mortgage, lease, exchange, transfer or otherwise
89 dispose of its property; or pledge its property as collateral

90 or security for any time period considered advisable by the
91 commission. All sales, leases or other disposition of real
92 property acquired with state road funds or federal funds,
93 or of real property dedicated to the state road system,
94 must be done in accordance with applicable federal and
95 state law and may be done only with the approval of the
96 commissioner. A county commission is also authorized to
97 create trusts as will expedite the efficient management of
98 transportation projects and other assets owned or con-
99 trolled by the county commission. The trustee, whether
100 individual or corporate, in any trust has a fiduciary
101 relationship with the county commission and may be
102 removed by the county commission for good cause shown
103 or for a breach of the fiduciary relationship with the
104 county commission. Nothing in this article effects a
105 waiver of the sovereign, constitutional or governmental
106 immunity of the state or its agencies.

107 (i) The powers conferred by this article are in addition
108 and supplemental to any other powers conferred upon
109 county commissions by the Legislature relating to streets,
110 road maintenance or to construct and maintain transpor-
111 tation facilities.

112 (j) After the issuance of any transportation revenue
113 bonds, the user fee pledged to the payment thereof may
114 not be reduced as long as any of the bonds are outstanding
115 and unpaid except under such terms, provisions and
116 conditions as shall be contained in the order, trust,
117 agreement or other proceedings under which the transpor-
118 tation revenue bonds were issued.

§17-28-7. Comprehensive agreement.

1 (a) Prior to acquiring, constructing or improving a
2 transportation facility, the project sponsors shall enter
3 into a comprehensive agreement with the division. The
4 comprehensive agreement shall provide for:

5 (1) Delivery of performance or payment bonds in connec-
6 tion with the construction of or improvements to the
7 transportation facility, in the forms and amounts satisfac-
8 tory to the division;

9 (2) Review and approval of the final plans and specifica-
10 tions for the transportation facility by the division;

11 (3) Inspection of the construction of or improvements to
12 the transportation facility to ensure that they conform to
13 the engineering standards acceptable to the division;

14 (4) Maintenance of a policy or policies of public liability
15 insurance or self-insurance, in a form and amount satis-
16 factory to the division and reasonably sufficient to insure
17 coverage of tort liability to the public and employees and
18 to enable the continued operation of the transportation
19 facility. However, in no event may the insurance impose
20 any pecuniary liability on the state, its agencies or any
21 political subdivision of the state. Copies of the policies
22 must be filed with the division accompanied by proofs of
23 coverage;

24 (5) Monitoring of the maintenance and operating prac-
25 tices of the sponsoring governmental entity by the division
26 and the taking of any actions the division finds appropri-
27 ate to ensure that the transportation facility is properly
28 maintained and operated;

29 (6) Itemization and reimbursement to be paid to the
30 division for the review and any services provided by the
31 division;

32 (7) Filing of appropriate financial statements on a
33 periodic basis;

34 (8) The date of termination of the sponsoring govern-
35 mental entity's duties under this article and dedication to
36 the division; and

37 (9) That a transportation facility must accommodate all
38 public utilities on a reasonable, nondiscriminatory and
39 completely neutral basis and in compliance with section
40 seventeen-b, article four, chapter seventeen of this code.

41 (b) In the comprehensive agreement, the division may
42 agree to accept grants or loans from the sponsoring
43 governmental entity, from time to time, from amounts
44 received from the state or federal government or any
45 agency or instrumentality of the state or federal govern-
46 ment.

47 (c) The comprehensive agreement is to incorporate the
48 duties of the sponsoring governmental entity under this
49 article and may contain any other terms and conditions
50 that the division determines serve the public purpose of
51 this chapter. Without limitation, the comprehensive
52 agreement may contain provisions under which the
53 division agrees to provide notice of default and cure rights
54 for the benefit of the sponsoring governmental entity and
55 the persons specified in the comprehensive agreement as
56 providing financing for the qualifying transportation
57 facility. The comprehensive agreement may contain any
58 other lawful terms and conditions to which the sponsoring
59 governmental entity and the division mutually agree.

60 (d) Any changes in the terms of the comprehensive
61 agreement, agreed upon by the parties must be added to
62 the comprehensive agreement by written amendment.

§17-28-8. Commissioner's authority over transportation projects accepted into the state road system; use of state road funds.

1 (a) Notwithstanding anything in this article to the
2 contrary, the commissioner has final approval of any
3 transportation project. However, no state road funds may
4 be used, singly or together with funds from any other
5 source, for any purpose or in any manner contrary to or

6 prohibited by the constitution and laws of this state or the
7 federal government or where such use, in the sole discre-
8 tion of the commissioner, would jeopardize receipt of
9 federal funds.

10 (b) All transportation projects that are accepted as part
11 of the state road system, and all real property interests and
12 appurtenances, are under the exclusive jurisdiction and
13 control of the commissioner, who may exercise the same
14 rights and authority as he or she has over other transpor-
15 tation facilities in the state road system. As a condition of
16 acceptance of a transportation project into the state road
17 system, the commissioner may require that the project
18 sponsor provide a dedicated revenue source for the
19 continued operation and maintenance of the transporta-
20 tion project.

21 (c) No state road funds may be used to finance a trans-
22 portation project without the written approval of the
23 commissioner.

**§17-28-9. Qualifying a transportation project as a public
improvement.**

1 All transportation projects authorized under this article
2 are public improvements and are subject to article five-a,
3 chapter twenty-one of this code. Article twenty-two,
4 chapter five of this code applies to all transportation
5 projects authorized under this article. All construction,
6 reconstruction, repair or improvement of transportation
7 projects under this article will be awarded by competitive
8 bidding. Competitive bids are to be solicited by the
9 governmental entity sponsoring a transportation project
10 for each construction contract in excess of \$25,000 in total
11 cost. Competitive bids must be solicited by the sponsoring
12 governmental entity through publication of a Class II legal
13 advertisement, as required by article three, chapter
14 fifty-nine of this code, and the publication area is the
15 county or municipality where the transportation facility

16 is to be located. The advertisement must also be published
17 as a Class II advertisement in a newspaper of general
18 circulation published in the city of Charleston. The
19 advertisement is to include the solicitations of sealed
20 proposals for the construction of the transportation
21 project, stating the time and place for the opening of bids.
22 All bids will be publicly opened and read aloud. Construc-
23 tion contracts must be awarded to the lowest qualified
24 responsible bidder, who furnishes a sufficient performance
25 or payment bond. The sponsoring governmental entity has
26 the right to reject all bids and solicit new bids for the
27 construction contract. Article one-c, chapter twenty-one
28 of this code applies to the construction of all transporta-
29 tion projects approved under this article.

§17-28-10. Coordination and development of transportation projects with other infrastructure; information sharing; agreements among municipal utilities and public service districts to participate in transportation projects; rates to include costs borne by municipal utilities and public service districts in coordination with transportation projects; exemption from Public Service Commission approval.

1 (a) The commissioner is to encourage the joint and
2 concurrent development and construction of transporta-
3 tion projects with other infrastructure including, without
4 limitation, water and sewer infrastructure.

5 (b) To coordinate and integrate the planning of transpor-
6 tation projects among local jurisdictions, all governing
7 bodies, units of government, municipal utilities and public
8 service districts within the affected local jurisdiction are
9 to cooperate, participate, share information and give input
10 when a project sponsor prepares a transportation project
11 plan.

12 (c) Municipal utilities and public service districts may
13 enter into agreements with any project sponsor for the
14 purpose of constructing new infrastructure facilities or
15 substantially improving or expanding infrastructure
16 facilities in conjunction with a transportation project and
17 dedicating revenue or contributing moneys to transporta-
18 tion project costs. Each agreement must contain, at a
19 minimum, engineering and construction standards, terms
20 regarding the revenue sources, allocation of project costs
21 and confirmation that the agreement does not violate any
22 existing bond covenants. Each agreement shall also
23 comply and be consistent with the comprehensive agree-
24 ment applicable to the transportation project. No infra-
25 structure facilities may be located or relocated within a
26 right-of-way in, or to be included within, the state road
27 system except in accordance with transportation project
28 plans approved by the commissioner.

29 (d) The rates charged by a municipal utility or public
30 service district to customers in an affected local jurisdic-
31 tion may include the additional cost borne by the municipi-
32 pal utility or public service district as a result of entering
33 into an agreement with a project sponsor to contribute
34 moneys or dedicate revenue to transportation project
35 costs.

36 (e) This article may not be construed to affect the
37 authority of the Department of Environmental Protection
38 nor the authority of the Department of Health and Human
39 Resources pursuant to this code.

40 (f) This article may not be construed to give the Public
41 Service Commission authority to regulate or intervene in
42 the approval and construction of any transportation
43 project or any agreement between a project sponsor and a
44 municipal utility or public service district under this
45 article.

§17-28-11. Excess funds; termination of user fee.

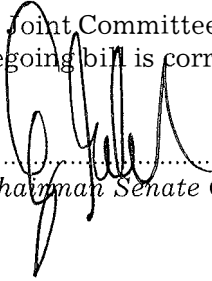
1 (a) When revenue bonds have been issued as provided in
2 this article and the amount of user fees imposed pursuant
3 to section five of this article and collected, less costs of
4 administration, collection and enforcement, exceeds the
5 amount needed to pay project costs and annual debt
6 service, including the finding of required debt service and
7 maintenance reserves, the additional amount shall be set
8 aside in a separate fund and used to either fund transpor-
9 tation projects on a cash basis or retire some or all of the
10 outstanding revenue bonds before their maturity date.
11 The county commission may establish a call date for which
12 bonds must be refunded with excess funds after a date
13 determined by the county commission.

14 (b) Once the revenue bonds issued as provided in this
15 article are no longer outstanding or a certified public
16 accountant certifies that sufficient reserves have been or
17 will be accumulated as of a specified date to pay all future
18 debt service on the outstanding bonds, the user fee that is
19 applicable to those specific bonds shall be discontinued.
20 Termination of the user fee as provided in this section
21 shall not bar or otherwise prevent the county commission
22 from collecting user fees that accrued before the termina-
23 tion date.

§17-28-12. Severability.

1 If any section, clause, provision or portion of this article
2 shall be held to be invalid or unconstitutional by any court
3 of competent jurisdiction, such holding shall not affect any
4 other section, clause or provision of this article which is
5 not in and of itself unconstitutional.


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

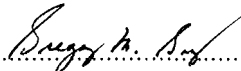

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Chairman Senate Committee

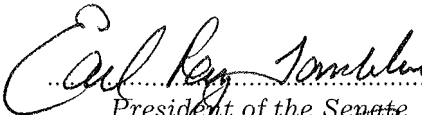

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Chairman House Committee

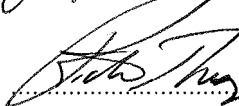
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *2nd*
April
Day of, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 4:10 pm