

1 annual reports to Governor and Legislature; annual audits of
2 the commission; and assistance of the Department of
3 Transportation to the board.

4 *Be it enacted by the Legislature of West Virginia:*

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §31-15D-1, §31-15D-2,
7 §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, §31-15D-7, §31-15D-8,
8 §31-15D-9 and §31-15D-10, all to read as follows:

9 **ARTICLE 15D. WEST VIRGINIA TRANSPORTATION FINANCE COMMISSION.**

10 **§31-15D-1. Legislative Findings.**

11 The West Virginia Legislature finds that:

12 (a) Adequate transportation facilities are an important
13 element in the ability of the state to provide for the health and
14 welfare of its citizens and the continuing economic growth and
15 development that will provide jobs for the citizens of West
16 Virginia;

17 (b) Traditional transportation financing methods in West
18 Virginia cannot generate the resources necessary to fund the cost
19 of transportation facilities which are required for the continued
20 economic viability and future economic expansion;

21 (c) The State of West Virginia has the ability to provide
22 alternative methods of financing highway and transportation
23 projects;

24 (d) Loans and other financial assistance to government units

1 can play an important part in meeting transportation needs and this
2 assistance is in the public interest and for the public benefit;
3 and

4 (e) This article provides an instrumentality to assist
5 government units in constructing and improving highway and other
6 transportation facilities by providing loans and other financial
7 assistance.

8 **§31-15D-2. Definitions.**

9 (a) "Commission" means the West Virginia Transportation
10 Finance Commission created in section three of this article;

11 (b) "Board" means the governing board of the commission
12 established in section three of this article.

13 (c) "Bond" means a revenue bond, note, or other evidence of
14 indebtedness.

15 (d) "Department of Transportation" means the Department of
16 Transportation established in section one, article two, chapter
17 five-f of this code or any successor to all or any substantial part
18 of its powers and duties.

19 (e) "Division of Highways" means the Division of Highways
20 established in section one, article two-a, chapter seventeen of
21 this code or any successor to all or any substantial part of its
22 powers and duties.

23 (f) "Eligible costs" means, as applied to a qualified project
24 to be financed, in whole or in part, from funds provided from

1 federal accounts, the costs that are permitted under applicable
2 federal laws, requirements, procedures and guidelines in regard to
3 establishing, operating and providing assistance from the
4 commission. As applied to a qualified project to be financed from
5 other funds otherwise provided by this article, eligible costs
6 include the costs of preliminary engineering, traffic and revenue
7 studies, environmental studies, rights-of-way, legal and financial
8 services associated with the development of a qualified project,
9 construction, construction management, facilities and other costs
10 necessary for the start up of the qualified project. As applied to
11 any qualified project to be financed from the State Road Fund,
12 eligible projects costs are limited to capital expenditures for
13 highway facilities.

14 (g) "Eligible project" means any public transportation project
15 of a government unit to acquire, plan, engineer, design, construct,
16 reconstruct, improve, repair, restore, maintain or rehabilitate any
17 highway, road, bridge, tunnel, public transit facility, aviation
18 facility or rail facility; a port or public port defined in §17-
19 16B-5 of this code; a transportation project eligible for financing
20 or aid under any federal or state program; or any transportation
21 project used for the transportation of people or goods within this
22 state and all structures, equipment, facilities, improvements,
23 appurtenances or activities necessary or incident thereto.

24 (h) "Federal accounts" means federal highway funds.

1 (i) "Financing agreement" means an agreement entered into
2 between the commission and a qualified borrower pertaining to or
3 evidencing a loan or other financial assistance. This agreement
4 may contain, in addition to financial terms, provisions relating to
5 the regulation and supervision of a qualified project or other
6 provisions as the board may determine. The term includes, without
7 limitation, a loan agreement, trust agreement, trust indenture,
8 security agreement, reimbursement agreement, guarantee agreement,
9 bond or note, ordinance or resolution, or similar instrument.

10 (j) "Federal agency" means the United States of America and
11 any department, corporation, agency or instrumentality created,
12 designated or established by the United States of America.

13 (k) "Fund" means the West Virginia Transportation Finance
14 Commission Fund established in section five of this article.

15 (l) "Government unit" means a municipal corporation, county,
16 port, port authority, transit authority and any other state or
17 local authority, board or other political subdivision of the state
18 which may construct, own or operate a qualified project.

19 (m) "Loan" means an obligation subject to repayment which is
20 provided by the commission to a qualified borrower for all or a
21 part of the cost of a qualified project. A loan may be disbursed
22 in anticipation of reimbursement for or direct payment of eligible
23 costs of a qualified project.

24 (n) "Loan obligation" means a bond, note or other evidence of

1 obligation issued by a qualified borrower.

2 (o) "Other financial assistance" means, but is not limited to,
3 credit enhancement, capital or debt reserves for bonds or debt
4 instrument financing, interest rate subsidies, provision of letters
5 of credit and credit instruments, provisions of bond or other debt
6 financing instrument security and other lawful forms of financing
7 and methods of leveraging funds that are approved by the board and
8 as allowed by law.

9 (p) "Qualified borrower" means any government unit which is
10 authorized to construct, operate or own a qualified project.

11 (q) "Qualified project" means an eligible project that is
12 compatible with the state transportation plan and with the local
13 comprehensive plan or plans, has been approved by the Department of
14 Transportation and has been selected by the commission to receive
15 a loan or other financial assistance from the commission to defray
16 eligible costs.

17 **§31-15D-3. West Virginia Transportation Finance Commission**
18 **established; composition and appointment of**
19 **commission board; compensation and expenses of**
20 **board members.**

21 (a) The West Virginia Transportation Finance Commission is
22 hereby created as a body corporate and politic, constituting a
23 public corporation and government instrumentality of the state.

24 (b) The governing body of the commission shall be a board

1 consisting of seven voting members as follows:

2 (1) The Secretary of the Department of Transportation or his
3 or her designee; and

4 (2) Six members appointed by the Governor with the advice and
5 consent of the Senate who are citizens of this state and meet the
6 requirements and qualifications prescribed in subsections (c) and
7 (d) of this section. No more than four members appointed by the
8 Governor may be of the same political party. Appointments shall be
9 made in a manner that each congressional district is represented
10 and so that no less than one member and not more than three members
11 of the board reside in any one congressional district.

12 (c) (1) The six members appointed by the Governor pursuant to
13 subdivision (2), subsection (b) of this section shall be appointed
14 by the Governor for terms that begin July 1, 2011 and expire as
15 follows:

16 (A) Two members shall be appointed for a term ending June 30,
17 2013;

18 (B) Two members shall be appointed for a term ending June 30,
19 2014; and

20 (C) Two members shall be appointed for a term ending June 30,
21 2015;

22 (2) Except for appointments to fill vacancies, each subsequent
23 appointment shall be for a term ending June 30 of the fourth year
24 following the year the preceding term expired. In the event a

1 vacancy occurs, it shall be filled by appointment for the unexpired
2 term. A member whose term has expired shall continue in office
3 until a successor has been duly appointed and qualified;

4 (3) No member appointed by the Governor pursuant to
5 subdivision (2), subsection (b) of this section may be a candidate
6 for or hold elected office. These members may be reappointed for
7 no more than two full terms.

8 (d) Each of the members of the board appointed by the Governor
9 pursuant to subdivision (2), subsection (b) of this section shall
10 be appointed based upon his or her demonstrated knowledge and
11 experience to effectively accomplish the purposes of this article
12 and shall meet the following qualifications:

13 (1) At least two shall be persons who have demonstrated
14 knowledge and experience in banking and financial services in the
15 private sector;

16 (2) At least one shall be a person who has demonstrated
17 knowledge and experience in public finance of government units in
18 the state;

19 (3) At least two shall be persons with demonstrated knowledge
20 and experience in the construction and administration of eligible
21 projects.

22 (e) The Secretary of the Department of Transportation shall
23 serve as chairperson. The board shall hold meetings at the request
24 of the chairperson. The chairperson shall determine the date and

1 time of each meeting.

2 (f) The board shall elect a vice chairperson and a secretary
3 from among the members. Four members of the board shall constitute
4 a quorum and the affirmative vote of at least a majority of those
5 members present shall be necessary for any action taken by vote of
6 the board: *Provided*, That approval or rejection of an application
7 for a loan or other financial assistance shall be made by majority
8 vote of the full membership of the board.

9 (g) Members of the board shall not be entitled to compensation
10 for services performed as members but shall be entitled to
11 reimbursement for all reasonable and necessary expenses actually
12 incurred in the performance of their duties.

13 **§31-15D-4. Powers and duties of the West Virginia Transportation**
14 **Finance Commission.**

15 (a) In addition to the powers contained elsewhere in this
16 article, the commission, by action of the board, shall have all
17 power necessary, useful or appropriate to fund, operate and
18 administer the commission and to perform its other functions
19 including, but not limited to, the power to:

20 (1) Have perpetual succession;

21 (2) Adopt, promulgate, amend and repeal bylaws not
22 inconsistent with this article for the administration of its
23 affairs and the implementation of its functions;

24 (3) Sue and be sued in its own name;

1 (4) Adopt a seal and alter it at its pleasure, although the
2 failure to affix the seal does not affect the validity of an
3 instrument executed on behalf of the commission;

4 (5) Make loans to qualified borrowers to finance the eligible
5 costs of qualified projects and to acquire, hold and sell loan
6 obligations at prices and in a manner as the board determines
7 advisable;

8 (6) Provide qualified borrowers with other financial
9 assistance necessary to defray the eligible costs of a qualified
10 project;

11 (7) Enter into contracts, arrangements and agreements with
12 qualified borrowers and other persons and to execute and deliver
13 all financing agreements and other instruments necessary or
14 convenient to the exercise of the powers granted in this article;

15 (8) Enter into agreements with a department, agency or
16 instrumentality of the United States, this state or another state
17 for the purpose of planning and providing for the financing of
18 qualified projects;

19 (9) Establish policies and procedures for the making and
20 administering of loans and other financial assistance;

21 (10) Establish fiscal controls and accounting procedures to
22 ensure proper accounting and reporting by the commission and
23 government units and to ensure proper oversight of all financing
24 agreements, loans, loan obligations and other financial assistance

1 established or issued for financial assistance of a qualified
2 project throughout the course of the financial assistance;

3 (11) Acquire by purchase, lease, donation or other lawful
4 means and to sell, convey, pledge, lease, exchange, transfer and
5 dispose of all or any part of its properties or assets of every
6 kind and character or any interest in it to further the public
7 purpose of the commission;

8 (12) Expend funds to obtain accounting, management, legal,
9 financial consulting and other professional services necessary to
10 the operations of the commission;

11 (13) Expend funds credited to the commission as the board
12 determines necessary for the costs of administering the operations
13 of the commission: *Provided*, That the costs of administering the
14 operations are approved by the Department of Transportation;

15 (14) Establish advisory committees as the board determines
16 appropriate, which may include individuals from the private sector
17 with banking and financial expertise or transportation
18 infrastructure expertise;

19 (15) Procure insurance against losses in connection with its
20 property, assets or activities, including insurance against
21 liability for its acts or the acts of its employees or agents or to
22 establish cash reserves to enable it to act as a self-insurer
23 against any and all such losses;

24 (16) Collect fees and charges in connection with its loans and

1 other financial assistance;

2 (17) Apply for, receive and accept from any source, aid,
3 grants and contributions of money, property, labor or other things
4 of value to be used to carry out the purposes of this article
5 subject to the conditions upon which the aid, grants or
6 contributions are made;

7 (18) Enter into contracts or agreements for the servicing and
8 processing of financial agreements; and

9 (19) Do all other things necessary or convenient to exercise
10 the powers granted or reasonably implied by this article.

11 (b) The commission is not, nor is it authorized or empowered
12 to be or to constitute, a bank or trust company within the
13 jurisdiction or under the control of the state or any agency
14 thereof or the Comptroller of the Currency or the Treasury
15 Department of the United States or a bank, banker or dealer in
16 securities within the meaning of, or subject to the provisions of,
17 any securities, securities exchange or securities dealers' law of
18 the United States or of the State of West Virginia.

19 (c) The provisions of this article may not be construed to
20 require the commission to make a loan or provide other financial
21 assistance to a government unit pursuant to the provisions of this
22 article.

23 **§31-15D-5. West Virginia Transportation Finance Commission Fund;**
24 **deposits in fund; disbursements to provide loans and**

1 other assistance; subaccounts.

2 (a) There is hereby established in the State Treasury a
3 special revenue account to be known as the West Virginia
4 Transportation Finance Commission Fund which shall be governed,
5 administered and accounted for by the board for the purposes set
6 forth in section four of this article. All proceeds and revenues
7 of the commission shall be deposited or credited to the fund.

8 (b) Funds from the following resources may be deposited to the
9 fund and used to capitalize the commission:

10 (1) Funds appropriated to the fund by the Legislature;

11 (2) Notwithstanding any provisions of article three, chapter
12 seventeen of this code to the contrary, annual contributions by the
13 Division of Highways or the Department of Transportation of funds
14 for the construction and maintenance of state highways, not to
15 exceed \$10 million. These funds may be used to match federal
16 capitalization grants to the commission and provide capital for the
17 state accounts of the commission;

18 (3) Federal funds that may be made available to the state for
19 the commission;

20 (4) Contributions and donations from public authorities,
21 government units and private entities;

22 (5) All moneys paid or credited to the commission, by contract
23 or otherwise; payments of principal and interest on loans or other
24 financial assistance made from the commission and interest earnings

1 which may accrue from the investment or reinvestment of the
2 commission moneys; and

3 (6) Other lawful sources as determined appropriate by the
4 board.

5 (c) Earnings on balances in the federal accounts must be
6 credited and invested according to federal law. Earnings on state
7 accounts must be credited to the account that generates the
8 earnings. The commission may establish accounts and subaccounts
9 within the fund as considered desirable to effectuate the purposes
10 of this article or to meet the requirements of any state or federal
11 programs.

12 (d) For the necessary and convenient administration of the
13 account, the board shall direct the State Treasurer to establish
14 accounts and subaccounts within the fund account necessary to meet
15 any applicable federal law requirements or as the commission shall
16 determine necessary or desirable in order to implement the
17 provisions of this article.

18 (e) The commission shall comply will all federal and state
19 laws and regulations prohibiting the commingling of funds deposited
20 in the account. Amounts in the fund that are prohibited from being
21 commingled with other amounts in the fund shall be segregated and
22 administered separate and apart from other amounts in the fund and
23 may not be transferred to any other account.

24 **§31-15D-6. Requirements for loans and other financial assistance.**

1 (a) Subject to the provisions of this article, the commission
2 may provide loans and other financial assistance to a government
3 unit to pay for all or a portion of the eligible cost of a
4 qualified project. The term of the loan or other financial
5 assistance shall not exceed thirty years. The commission shall
6 require the government unit to enter into an agreement to evidence
7 all of the terms and conditions of the loan obligation. The
8 commission may require that the government unit obtain or provide
9 matching funds for the qualified project from sources other than
10 the loan from the commission. The board shall determine the form
11 and content of loan applications, finance agreements and loan
12 obligations, including the term and rate or rates of interest on a
13 finance agreement. The terms and conditions of a loan or other
14 financial assistance from a federal account shall comply with
15 applicable federal requirements.

16 (b) To implement and carry out the intent of this article, the
17 board shall propose rules for legislative approval in accordance
18 with article three, chapter twenty-nine-a of this code to develop
19 comprehensive uniform guidelines for use by the board in evaluating
20 any request by a government unit for funding assistance from the
21 commission. The guidelines shall include, but are not limited to,
22 the following criteria:

23 (1) The feasibility of the project and the amount and degree
24 of risk assumed by the commission;

1 (2) The local support of the project, expressed by resolutions
2 of the governing bodies in the areas in which the project will be
3 located, and the financial or in-kind contributions to the project;

4 (3) Whether the project is consistent with the adopted
5 transportation plan of the appropriate planning organization,
6 including any metropolitan planning organization whose jurisdiction
7 includes the location of the project, and the transportation plan
8 of the division;

9 (4) Whether the existing transportation infrastructure of the
10 area served by the project is adversely affected by the project;

11 (5) The economic development benefits of the project;

12 (6) The degree to which the project will correct deficiencies
13 or will supplement the existing transportation infrastructure of
14 the area served by the project;

15 (7) The cost effectiveness of the project as compared with
16 alternatives which achieve substantially the same public
17 transportation or economic development benefits;

18 (8) The availability of alternative sources of funding which
19 could finance all or a part of the project and the need for the
20 assistance of the commission to finance the project or for the
21 applicant to attract other sources of funding;

22 (9) The applicant's ability to operate and maintain the
23 transportation facilities if the project is approved;

24 (10) The degree to which the project achieves other state or

1 regional planning goals;

2 (11) The estimated date upon which the project could commence
3 if the loan or other financial assistance were available and the
4 estimated completion date of the project; and

5 (12) Whether the governing bodies of the county or the
6 incorporated municipality in which the project is to be located
7 provides to the commission a resolution which makes a finding that
8 the project is essential to or necessary for the transportation
9 needs of the public.

10 The board may also promulgate emergency rules pursuant to the
11 provisions of section fifteen, article three, chapter twenty-nine-a
12 of this code to develop and establish guidelines pursuant to this
13 subsection.

14 (c) A government unit requesting funding assistance from the
15 commission for a qualified project shall submit a preliminary
16 application in writing to the board. The board shall create a
17 preliminary application form which shall be used by all government
18 units requesting funding assistance from the commission for a
19 qualified project. The preliminary application shall contain:

20 (1) All information required by all state agencies that will
21 be required to issue permits and/or certificates regarding the
22 project;

23 (2) The type and proposed location of the project;

24 (3) The estimated total cost of the project;

1 (4) The amount of funding assistance required and the specific
2 uses of the funding;

3 (5) The proposed method of repayment of any loans or other
4 financial assistance for the project provided by the commission;

5 (6) Other sources of funding available or potentially
6 available for the project;

7 (7) Information demonstrating the need for the project and
8 that the proposed funding of the project is the most economically
9 feasible and viable alternative to completing the project; and

10 (8) Such other information as the board considers necessary to
11 enable it to evaluate the project financing, in terms of the kind,
12 amount and source of funding, and to otherwise carry out the intent
13 of this article.

14 **§31-15D-7. Finance agreements; repayment of loans.**

15 (a) The commission may provide loans or other financial
16 assistance to qualified borrowers through finance agreements.

17 Qualified borrowers entering into a finance agreement and issuing
18 loan obligations to the commission may perform any acts, take any
19 action, adopt any proceedings and make and carry out any contracts
20 or agreements with the commission as may be agreed to by the
21 commission and the qualified borrower for the purposes of carrying
22 out the provisions contemplated by this article.

23 (b) Each loan or other financial assistance made or provided
24 by the commission to a qualified borrower shall be evidenced by a

1 written finance agreement between the commission and the qualified
2 borrower to which the loan or other financial assistance shall be
3 made or provided, setting forth the terms of the loan or other
4 financial assistance, which agreement shall include, without
5 limitation and to the extent applicable, the following provisions:

6 (1) The estimated cost of the qualified project, the amount of
7 the loan or the nature of the financial assistance and, in the case
8 of a loan, the terms of repayment and the security therefor, if
9 any;

10 (2) The specific purposes for which the loan proceeds shall be
11 expended or the benefits to accrue from the financial assistance
12 and the conditions and procedure for disbursing loan proceeds;

13 (3) The duties and obligations imposed upon the government
14 unit regarding the acquisition, construction, improvement or
15 operation of the qualified project;

16 (4) The agreement of the governmental unit to the withholding
17 of payments pursuant to the finance agreement that are owed by the
18 governmental unit to the commission which are in default in
19 accordance with the provisions of section eight of this article;
20 and

21 (5) The agreement of the governmental unit to comply with all
22 applicable federal and state laws and all rules issued or imposed
23 by the commission or other state, federal or local bodies regarding
24 the acquisition, construction, improvement or operation of the

1 qualified project and granting the commission the right to appoint
2 a receiver for the qualified project if the governmental unit
3 should default on any terms of the agreement.

4 (c) In addition to the authorizations contained in this
5 article, all other statutes or provisions permitting qualified
6 borrowers to borrow money and issue obligations may be utilized by
7 a qualified borrower in obtaining a loan or other financial
8 assistance from the commission to the extent determined necessary
9 or useful by the qualified borrower in connection with any
10 financing agreement and the issuance, securing or sale of loan
11 obligations to the commission.

12 (d) A qualified borrower may receive, apply, pledge, assign
13 and grant a security interest in project revenues or any other
14 revenues of the governmental unit which may otherwise be lawfully
15 pledged or assigned as security, to secure its obligations as
16 provided in this article; and may fix, revise, charge and collect
17 fees, rates, rent, assessments and other charges of general or
18 special application for the operation or services of a qualified
19 project, the system of which it is a part, and any other revenue
20 producing facilities from which the qualified borrower derives
21 project revenues to meet its obligations under a financing
22 agreement or to provide for the construction and improving of a
23 qualified project.

24 (e) Any resolution of the commission approving loan or other

1 financial assistance shall include a finding and determination that
2 the requirements of this section have been met.

3 **§31-15D-8. Interception and withholding of defaulted payments**
4 **from funds allotted or payable to a defaulting**
5 **government unit.**

6 (a) Any payment owed by a government unit to the commission
7 pursuant to a financing agreement that is in default may be
8 intercepted and withheld from any funds administered or in the
9 custody of the Treasurer which are owned by, allotted or payable to
10 the government unit in default. In the event of default by a
11 government unit upon any payment due, the commission may notify the
12 Treasurer of the default. Upon receipt of a notification of
13 default, the Treasurer shall withhold the amount of the payment in
14 default and payable to the commission from any funds administered
15 or in the custody of the Treasurer which are owned by, allotted or
16 payable to the government unit in default. The amount withheld
17 shall be remitted by the Treasurer to the commission and applied
18 toward the payment in default.

19 (b) Withholdings or interceptions pursuant to this section may
20 not be made from funds owned by, allotted or payable to a
21 government unit in default which are restricted to use for a
22 particular purpose by law or which violate the terms of any
23 agreement governing the funds or which would be in violation of the
24 laws of this state or of the United States.

1 (c) The commission and the Treasurer may enter into an
2 agreement to effect the provisions of this section.

3 **§31-15D-9. Annual reports; audits.**

4 On October 1 of each year, the commission shall submit an
5 annual report of its activities for the preceding fiscal year to
6 the Governor and the Legislature. Each such report shall set forth
7 a complete operating and financial statement of the commission's
8 operation during the preceding fiscal year. The commission shall
9 also submit an annual report to the appropriate federal agencies in
10 accordance with the requirements of the federal agencies. The
11 commission shall cause an audit of its books and records to be made
12 by an independent certified public accountant for each fiscal year.

13 **§31-15D-10. Department of Transportation assistance to the**
14 **commission.**

15 The Department of Transportation shall provide staff and
16 assist the commission in the administration of the program and the
17 performance of the commission under this article. In providing
18 this assistance, the department may:

19 (a) Assist in the formulation, establishment and structuring
20 of programs undertaken by the commission pursuant to this article;

21 (b) Provide government units with information as to the
22 commission and the procedures for obtaining the assistance intended
23 by this article;

24 (c) Assist government units in making applications to state

1 and federal agencies, including the commission, as may be necessary
2 or helpful in order to avail themselves of this program;

3 (d) Assist the commission in analyzing and evaluating requests
4 for assistance pursuant to this article;

5 (e) Assist in the structuring and negotiating of financing
6 agreements;

7 (f) Administer the fund, including any accounts in it;

8 (g) Administer the commission's accounts, loans and other
9 financial assistance, including monitoring compliance by government
10 units or private entities with any rules, regulations or other
11 requirements of the commission with respect to the programs and
12 compliance with covenants and agreements made by the government
13 units or private entities with respect to a financing agreement;
14 and

15 (h) Provide other assistance and perform other duties as may
16 be requested or directed by the commission.

NOTE: The purpose of this bill is to create the West Virginia Transportation Finance Commission. The purpose of the commission is to provide loans and other financial assistance to government units for transportation infrastructure.

This article is new; therefore, it has been completely underscored.