

Senate Bill No. 606

(By Senators Kessler (Acting President) and Hall,
by Request of the Executive)

[Introduced February 21, 2011; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §12-6-20; to amend
and reenact §17-16A-10 of said code; and to amend and reenact
§31-15A-11 of said code, all relating to providing funding and
financing mechanisms for the parkways project along U. S.
Route 35 in Putnam and Mason counties; authorizing the
Investment Management Board to make investments out of the
Public Employees Retirement System by purchasing bonds issued
by the Parkways Authority to finance construction of a portion
of an approved parkways project on U. S. Route 35 in Mason
County and Putnam County; providing legislative findings;
providing limitations on the amount of financing; establishing
rate of return on investment; creating a Parkways Authority
Investment Fund in the State Treasury; providing the manner in

1 which the Investment Management Board will be repaid from the
2 Parkways Authority Investment Fund; requiring certification of
3 certain transfers between the Investment Management Board and
4 the Parkways Authority Investment Fund; providing the
5 Investment Management Board immunity from liability if actions
6 proper according to provisions of section; requiring the
7 General Manager of the Parkways Authority to certify funding
8 amounts in Debt Service Reserve Fund to certain persons on
9 dates certain; providing that subsequent to transfer of
10 certain moneys from the West Virginia Infrastructure Fund into
11 the West Virginia Infrastructure Lottery Revenue Debt Service
12 Fund, other moneys in the West Virginia Infrastructure Fund be
13 dedicated to maintaining the Debt Service Reserve Fund for the
14 U. S. Route 35 parkways project before being dedicated to
15 other infrastructure projects; and making technical
16 corrections.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new section, designated §12-6-20; that
20 §17-16A-10 of said code be amended and reenacted; and that
21 §31-15A-11 of said code be amended and reenacted, all to read as
22 follows:

23 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

24 **ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.**

1 **§12-6-20. Investment with West Virginia Parkways Authority.**

2 (a) The Legislature finds and declares:

3 (1) That the public health and safety concerns are a major
4 reason a new U.S. Route 35 needs to be completed as a modern
5 four-lane highway as soon as possible;

6 (2) That the high volume of traffic on "old" U.S. Route 35,
7 including commercial trucks traveling at high rates of speed and
8 out-of-state passenger vehicles unfamiliar with the roadway has
9 historically led to a significant number of collisions with
10 resulting property damage, injury and, in some tragic cases,
11 fatalities;

12 (3) That the West Virginia Department of Transportation,
13 Division of Highways has reported that during the period from
14 January 1, 1991 to December 31, 1994, there were six hundred
15 forty-two reported accidents on "old" U.S. Route 35, which resulted
16 in twelve fatalities;

17 (4) That a traffic accident rate analysis prepared by the West
18 Virginia Department of Transportation, Division of Highways for
19 "old" U.S. Route 35 for the period from January 1, 1991 to December
20 31, 1994, concluded that the fatality rate for "old" U.S. Route 35
21 is twenty-five percent higher than the national average for similar
22 highways;

23 (5) That recent national accident rate statistics reflect that
24 fatality rates on two-lane highways similar to "old" U.S. Route 35

1 are nearly two point six times greater than those experienced on
2 four-lane highways;

3 (6) That the West Virginia Department of Transportation,
4 Division of Highways has determined that safety improvements to
5 "old" U.S. Route 35 would only result in a marginal reduction in
6 the severity and number of accidents on "old" U.S. Route 35, but
7 that completion of new U.S. Route 35 as a modern four-lane highway
8 would be expected to reduce the fatality rates and severity of
9 accidents;

10 (7) That the West Virginia Department of Transportation,
11 Division of Highways' consulting traffic engineers have conducted
12 a comprehensive traffic study for U.S. Route 35 and have concluded
13 that travel on new U.S. Route 35 will be safer than on "old" U.S.
14 Route 35, and that a significant number of commercial trucks are
15 likely to use new U.S. Route 35 even if they are required to pay
16 tolls, making use of old U.S. Route 35 safer to the extent such
17 trucks use the new road instead;

18 (8) That it is anticipated that the completion of new U.S.
19 Route 35 will attract manufacturing and other businesses to the
20 state, resulting in increased economic and industrial expansion
21 along the new four-lane highway;

22 (9) That completion of new U.S. Route 35 as modern four-lane
23 highway will likely lead to greater employment opportunities,
24 increased tourism, an enhanced tax base and greater overall

1 prosperity in the state;

2 (10) That modern, divided, four-lane highways are necessary to
3 attract new business, commerce and industry to this state, to
4 encourage tourism, to retain existing business and industry
5 providing the citizens of this state with economic security and to
6 advance the business prosperity of this state and the economic
7 welfare of the citizens of this state;

8 (11) That completion of new U.S. Route 35 as a modern
9 four-lane highway is expected to increase tourism in the state as
10 a result of the likely increase in the number of travelers from the
11 Midwest coming into the state who will purchase goods, supplies and
12 services, thereby providing substantial overall economic benefits
13 to the State of West Virginia;

14 (12) That modern, divided, four-lane highways are necessary to
15 enhance and expand existing and future recreational and tourism
16 opportunities and industries appurtenant thereto; and

17 (13) That the enacting of new taxes, or the diversion of tax
18 revenues from other essential departments and functions of
19 government, in order to support the completion of the parkways
20 project along U.S. Route 35 in Putnam County and Mason County, is
21 not in the best interests of the people of the state represented in
22 the Legislature.

23 (b) The board is expressly authorized and shall upon the
24 written request of the Parkways Authority purchase, as an

1 investment, up to a maximum principal amount of \$110 million of
2 toll revenue bonds issued by the Parkways Authority to finance a
3 portion of the costs of constructing a portion of the parkways
4 project along U.S. Route 35 between West Virginia Route 859 in
5 Putnam County and County Route 40 in Mason County from funds
6 available for investment from the public employees retirement
7 system. The toll revenue bonds and interest thereon shall be
8 repaid from the sources and in the manner hereafter described in
9 this section. Interest on the bonds shall accrue at a rate equal
10 to the annualized rate of return earned by the composite
11 fixed-income portfolio of the public employees retirement system
12 over the previous five years, net of expenses, plus one tenth of
13 one percent: *Provided*, That in all events this rate of return may
14 not be less than five percent per annum and may not be more than
15 six and three-tenths percent per annum. The monthly rate of return
16 for the immediately succeeding three months shall be calculated at
17 the end of each calendar quarter until the bonds are fully repaid.
18 The total of the amounts invested may not exceed a total of \$110
19 million, and the authority to make the investment authorized by
20 this section shall expire at five o'clock p.m. eastern prevailing
21 time on April 30, 2011: *Provided*, That if the Parkways Authority
22 shall have delivered its written request to the board pursuant to
23 this subsection (b) prior to that date and time, the actual
24 investment in and purchase of the toll revenue bonds of the

1 Parkways Authority may be made after April 30, 2011, but no later
2 than June 30, 2011, if the Parkways Authority so requests in
3 writing.

4 (c) There is created in the State Treasury a Parkways
5 Authority Investment Fund expressly authorized and dedicated to the
6 repayment of capital invested under this section and replenishment
7 of the debt service reserve fund established by and administered in
8 accordance with the trust indenture related to the Parkways
9 Authority's toll revenue bonds issued to finance costs of the
10 parkways project identified in subsection (b) of this section. The
11 Treasurer shall administer the Parkways Authority Investment Fund.
12 The Parkways Authority Investment Fund is an interest-bearing
13 account with interest earned credited to and deposited back into
14 that fund. The Parkways Authority Investment Fund shall consist of
15 debt service payments transferred to the fund in accordance with
16 subdivision (d) of this subsection and any transfers from the West
17 Virginia Infrastructure Fund made pursuant to section eleven,
18 article fifteen-a, chapter thirty-one of this code.

19 (d) At the end of each calendar quarter, the trustee of the
20 Parkways Authority's toll revenue bonds issued by the Parkways
21 Authority to finance a portion of the costs of constructing a
22 portion of the parkways project along U.S. Route 35 between West
23 Virginia Route 859 in Putnam County and County Route 40 in Mason
24 County shall transfer to the Parkways Authority Investment Fund an

1 amount equal to one fourth of the next succeeding principal payment
2 required to be made on the bonds, plus the interest accrued on the
3 outstanding principal amount of the bonds calculated at the
4 applicable interest rate determined in accordance with subsection
5 (b) of this section. The trustee shall make the transfer out of:
6 (1) The tolls, rents, fees, charges and other revenues associated
7 with the operation of the parkways project that are collected and
8 deposited initially by the Parkways Authority into the revenue
9 fund, for further deposit by the trustee into the bond fund, each
10 such fund established by and administered by the trustee in
11 accordance with the trust indenture related to the Parkway
12 Authority's aforementioned toll revenue bonds; (2) capitalized
13 interest; (3) the Debt Service Reserve Fund established by and
14 administered in accordance with the trust indenture; or (4) any
15 combination thereof. Thereafter, the Treasurer shall, within ten
16 days following the end of each calendar quarter, transfer amounts
17 from the Parkways Authority Investment Fund to the Investment
18 Management Board that are sufficient to pay the principal and
19 interest due on the bonds. Payment of principal and interest on
20 the bonds shall begin thirty-six months from the date the initial
21 funds are invested, or by April 10, 2014, whichever is later, and
22 payment of interest on the bonds shall begin within ninety days of
23 the purchase of the bonds.

24 (e) The board shall calculate the amount of the principal and

1 interest paid during the prior twelve months and certify the amount
2 to the Treasurer on December 1 of each year, until the principal
3 amount of all bonds, and interest accrued thereon, have been
4 repaid.

5 (f) Within ten days of receipt of the amounts transferred to
6 the Parkways Authority Investment Fund from the West Virginia
7 Infrastructure Fund in accordance with section eleven, article
8 fifteen-a, chapter thirty-one of this code, the Treasurer shall
9 transfer to the debt service fund identified in subsection (c) of
10 this section an amount equal to the difference between (1) the
11 amount required to be maintained in the debt service reserve fund
12 established in conjunction with the Parkways Authority's toll
13 revenue bonds issued to finance the parkways project identified in
14 subsection (b) of this section and (2) the amount on deposit as of
15 April 1 of each year in the debt service reserve fund, as certified
16 by the general manager of the Parkways Authority pursuant to
17 subsection (m), section ten, article sixteen-a, chapter seventeen
18 of this code.

19 (g) The Legislature recognizes the fiduciary liability and
20 responsibility imposed on the board by this article and by article
21 six, chapter forty-four of this code. The board, its trustees and
22 employees, have no liability, either personally or corporately with
23 respect to the investment provided in this section, if the
24 investment is made in accordance with the provisions of this

1 section.

2 (h) The Parkways Authority shall expend the funds invested
3 under the provisions of this section to construct a portion of the
4 parkways project identified in subsection (b) of this section.

5 (i) The Parkways Authority may prepay without penalty, in
6 whole or in part, upon thirty days written notice to the board all
7 or any part of the outstanding toll revenue bonds referred to in
8 this section together with the interest accrued thereon to the date
9 of the prepayment.

10 **CHAPTER 17. ROADS AND HIGHWAYS.**

11 **ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND**
12 **TOURISM AUTHORITY.**

13 **§17-16A-10. Parkway revenue bonds generally.**

14 (a) The Parkways Authority is authorized to provide by
15 resolution for the issuance of parkway revenue bonds of the state
16 for the purpose of paying all or any part of the cost of one or
17 more parkway projects: *Provided*, That this section ~~shall~~ may not
18 be construed as authorizing the issuance of parkway revenue bonds
19 for the purpose of paying the cost of the West Virginia Turnpike,
20 which parkway revenue bonds may be issued only as authorized under
21 section eleven of this article. The principal of and the interest
22 on bonds shall be payable solely from the funds provided for
23 payment, including funds to be transferred in accordance with
24 section twenty, article six, chapter twenty and subsection (b) of

1 section eleven, article fifteen-a, chapter thirty-one of this code.

2 (b) The bonds of each issue shall be dated, shall bear
3 interest at a rate as may be determined by the Parkways Authority
4 in its sole discretion, shall mature at a time not exceeding forty
5 years from their date or of issue as may be determined by the
6 Parkways Authority, and may be made redeemable before maturity, at
7 the option of the Parkways Authority at a price and under the terms
8 and conditions as may be fixed by the Parkways Authority prior to
9 the issuance of the bonds.

10 (c) The Parkways Authority shall determine the form of the
11 bonds, including any interest coupons to be attached thereto, and
12 shall fix the denomination of the bonds and the place of payment of
13 principal and interest, which may be at any bank or trust company
14 within or without the state.

15 (d) The bonds shall be executed by manual or facsimile
16 signature by the chair of the Parkways Authority, and the official
17 seal of the Parkways Authority shall be affixed to or printed on
18 each bond, and attested, manually or by facsimile signature, by the
19 secretary and treasurer of the Parkways Authority. Any coupons
20 attached to any bond shall bear the manual or facsimile signature
21 of the chair of the Parkways Authority.

22 (e) ~~In case~~ If any officer whose signature or a facsimile of
23 whose signature appears on any bonds or coupons shall cease to be
24 an officer before the delivery of the bonds, the signature or

1 facsimile shall nevertheless be valid and sufficient for all
2 purposes the same as if he had remained in office until delivery.
3 ~~In case~~ If the seal of the Parkways Authority has been changed
4 after a facsimile has been imprinted on the bonds, then the
5 facsimile seal will continue to be sufficient for all purposes.

6 (f) All bonds issued under the provisions of this article
7 shall have all the qualities and incidents of negotiable
8 instruments under the negotiable instruments law of the state. The
9 bonds may be issued in coupon or in registered form, or both, as
10 the Parkways Authority may determine, and provision may be made for
11 the registration of any coupon bonds as to principal alone and also
12 as to both principal and interest, and for the recorders into
13 coupon bonds of any bonds registered as to both principal and
14 interest.

15 (g) The Parkways Authority may sell the bonds at a public or
16 private sale at a price it determines to be in the best interests
17 of the state.

18 (h) The proceeds of the bonds of each issue shall be used
19 solely for the payment of the cost of the parkway project or
20 parkway projects for which the bonds were issued, and shall be
21 disbursed in a manner consistent with the resolution authorizing
22 the issuance of the bonds or in the trust agreement securing the
23 bonds.

24 (i) If the proceeds of the bonds of any issue, by error of

1 estimates or otherwise, shall be less than the cost, then
2 additional bonds may in like manner be issued to provide the amount
3 of the deficit. Unless otherwise provided in the resolution
4 authorizing the issuance of the bonds or in the trust agreement
5 securing the bonds, the additional bonds shall be ~~deemed~~ considered
6 to be of the same issue and shall be entitled to payment from the
7 same fund without preference or priority of the bonds first issued.

8 (j) If the proceeds of the bonds of any issue exceed the cost
9 of the parkway project or parkway projects for which the bonds were
10 issued, then the surplus shall be deposited to the credit of the
11 sinking fund for the bonds.

12 (k) Prior to the preparation of definitive bonds, the Parkways
13 Authority may, under like restrictions, issue interim receipts or
14 temporary bonds, with or without coupons, exchangeable for
15 definitive bonds when the bonds have been executed and are
16 available for delivery. The Parkways Authority may also provide
17 for the replacement of any bonds that become mutilated or are
18 destroyed or lost.

19 (l) Bonds may be issued under the provisions of this article
20 without obtaining the consent of any department, division,
21 commission, board, bureau or agency of the state in accordance with
22 this article: *Provided*, That the Parkways Authority shall comply
23 with the provisions of section twenty-eight, article one, chapter
24 five of this code.

1 (m) On or before May 1 of each year, the general manager of
2 the Parkways Authority shall certify to the Director of the Water
3 Development Authority, the Executive Director of the Investment
4 Management Board and the Trustee of the Parkways Authority's toll
5 revenue bonds issued to finance construction of a portion of the
6 parkways project along U.S. Route 35 between West Virginia Route
7 859 in Putnam County and County Route 40 in Mason County: (1) The
8 amount required to be maintained in the debt service reserve fund
9 established in conjunction with the toll revenue bonds; (2) the
10 amount on deposit as of April 1 in the debt service reserve fund;
11 and (3) the difference between the amounts specified in (1) and (2)
12 above, if any.

13 **CHAPTER 31. CORPORATIONS.**

14 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**
15 **COUNCIL.**

16 **§31-15A-11. Reservation of funds for projects and infrastructure**
17 **projects.**

18 Subsequent to the transfer of \$6 million from the West
19 Virginia Infrastructure Fund for deposit into the West Virginia
20 Infrastructure Lottery Revenue Debt Service Fund, the remaining
21 funds transferred to the West Virginia Infrastructure Fund shall be
22 dedicated as follows:

23 (a) Eighty percent of the funds deposited in the West Virginia
24 Infrastructure Fund shall be dedicated for the purpose of providing

1 funding for the cost of projects as defined in subsection ~~(n)~~ (o),
2 section two of this article.

3 (b) Twenty percent of the funds deposited in the West Virginia
4 Infrastructure Fund shall be dedicated as follows:

5 (1) Prior to the dedication of any funds for costs of
6 infrastructure projects pursuant to subdivision (2) of this
7 subsection from the amounts transferred from the State Excess
8 Lottery Revenue Fund pursuant to section eighteen-a, article
9 twenty-two, chapter twenty-nine of this code, an amount equal to
10 the difference between: (A) The amount required to be maintained in
11 the debt service reserve fund established in conjunction with the
12 Parkways Authority's toll revenue bonds issued by the Parkways
13 Authority to finance a portion of the costs of constructing a
14 portion of the parkways project along U.S. Route 35 between West
15 Virginia Route 859 in Putnam County and County Route 40 in Mason
16 County; and (B) the amount on deposit as of April 1 of each year in
17 the debt service reserve fund, as certified by the general manager
18 of the Parkways Authority to the Water Development Authority,
19 Investment Management Board and the trustee of the revenue bonds
20 pursuant to subsection (m), section ten, article sixteen-a, chapter
21 seventeen of this code, or \$8 million, whichever is less, is
22 expressly authorized and dedicated and shall be transferred from
23 the West Virginia Infrastructure Fund for deposit into the Parkways
24 Authority Investment Fund established pursuant to section twenty,

1 article six, chapter twelve to be further transferred in accordance
2 with subsection (f) of section twenty, article six, chapter twelve
3 within ten days of receipt of the certification.

4 (2) Any remaining moneys in the fund under this subdivision
5 shall be dedicated for the purpose of providing funding for costs
6 of infrastructure projects as defined in subsection (1), section
7 two of this article.

8 (c) Project sponsors of infrastructure projects shall follow
9 the application process as established by this article: *Provided,*
10 That notwithstanding any provision of this article to the contrary,
11 all applications for any infrastructure project shall be submitted
12 to the executive director of the West Virginia Development Office
13 for review, recommendation and approval regarding infrastructure
14 project funding.

NOTE: The purpose of this bill is to provide a funding mechanism to complete the remaining portion of U.S. Route 35 in Putnam County and Mason County. The Investment Management Board would purchase toll revenue bonds from the West Virginia Parkways Authority, as an investment. The toll revenue bonds shall be repaid from debt service from tolls, rents, fees, charges and other revenues. Creates a new fund called the Parkways Authority Investment Fund administered by the Treasurer to administer certain transfers related to repayment of the toll revenue bonds. The bill allows transfers from the West Virginia Infrastructure Fund to the Parkways Authority Investment Fund to enhance the credit structure of the Investment Management Board investment in the toll revenue bonds. The bill also requires annual certification of certain information by the general manager of the Parkways Authority upon which transfers are predicated.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.

§12-6-20 is new; therefore, underscoring and strike-throughs have been omitted.