

ENGROSSED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 606

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

[Originating in the Committee on Transportation
and Infrastructure; reported February 25, 2011.]

A BILL to amend and reenact §17-16A-10 of the Code of West Virginia, 1931, as amended; 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; allowing funds transferred from West Virginia Infrastructure Fund to be deposited into the U. S. Route 35 Toll Revenue Enhancement Fund for further deposit into a debt service reserve fund; requiring the general manager of the Parkways Authority to certify funding amounts in Debt Service Reserve Fund to

certain persons on dates certain; creating the U. S. Route 35 Toll Revenue Enhancement Fund within the Parkways Authority; requiring the Parkways Authority to transfer moneys from the U. S. Route 35 Toll Revenue Enhancement Fund to the trustee of toll revenue bonds for deposit into a debt service reserve fund associated with toll revenue bonds; providing prepayment of bonds; providing for the removal of tolls upon the retiring of the toll revenue bonds; providing that subsequent to transfer of certain moneys from the West Virginia Infrastructure Fund into the West Virginia Infrastructure Lottery Revenue Debt Service Fund, other moneys in the West Virginia Infrastructure Fund be dedicated to maintaining the Debt Service Reserve Fund for the U. S. Route 35 parkways project before being dedicated to other infrastructure projects; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §17-16A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31-15A-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

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

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

1 (a) The Parkways Authority is authorized to provide by
2 resolution for the issuance of parkway revenue bonds of the
3 state for the purpose of paying all or any part of the cost of
4 one or more parkway projects: *Provided*, That this section
5 ~~shall~~ may not be construed as authorizing the issuance of
6 parkway revenue bonds for the purpose of paying the cost of
7 the West Virginia Turnpike, which parkway revenue bonds
8 may be issued only as authorized under section eleven of this
9 article. The principal of and the interest on bonds shall be
10 payable solely from the funds provided for payment, includ-
11 ing any reserve funds established therefor. Parkway revenue
12 bonds of the Parkways Authority issued to finance a portion
13 of the costs of constructing a portion of the parkways project
14 along U. S. Route 35 between West Virginia Route 859 in
15 Putnam County and County Route 40 in Mason County shall
16 be referred to in this section and in section eleven, article
17 fifteen-a, chapter thirty-one of this code as “toll revenue
18 bonds” of the Parkways Authority.

19 (b) The bonds of each issue shall be dated, shall bear
20 interest at a rate as may be determined by the Parkways
21 Authority in its sole discretion, shall mature at a time not

22 exceeding forty years from their date or of issue as may be
23 determined by the Parkways Authority, and may be made
24 redeemable before maturity, at the option of the Parkways
25 Authority at a price and under the terms and conditions as
26 may be fixed by the Parkways Authority prior to the issu-
27 ance of the bonds.

28 (c) The Parkways Authority shall determine the form of the
29 bonds, including any interest coupons to be attached thereto,
30 and shall fix the denomination of the bonds and the place of
31 payment of principal and interest, which may be at any bank
32 or trust company within or without the state.

33 (d) The bonds shall be executed by manual or facsimile
34 signature by the chair of the Parkways Authority, and the
35 official seal of the Parkways Authority shall be affixed to or
36 printed on each bond, and attested, manually or by facsimile
37 signature, by the secretary and treasurer of the Parkways
38 Authority. Any coupons attached to any bond shall bear the
39 manual or facsimile signature of the chair of the Parkways
40 Authority.

41 (e) ~~In case~~ If any officer whose signature or a facsimile of
42 whose signature appears on any bonds or coupons shall cease
43 to be an officer before the delivery of the bonds, the signa-

44 ture or facsimile shall nevertheless be valid and sufficient for
45 all purposes the same as if he had remained in office until
46 delivery. ~~In case~~ If the seal of the Parkways Authority has
47 been changed after a facsimile has been imprinted on the
48 bonds, then the facsimile seal will continue to be sufficient
49 for all purposes.

50 (f) All bonds issued under the provisions of this article
51 shall have all the qualities and incidents of negotiable
52 instruments under the negotiable instruments law of the
53 state. The bonds may be issued in coupon or in registered
54 form, or both, as the Parkways Authority may determine,
55 and provision may be made for the registration of any
56 coupon bonds as to principal alone and also as to both
57 principal and interest, and for the recorders into coupon
58 bonds of any bonds registered as to both principal and
59 interest.

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

63 (h) The proceeds of the bonds of each issue shall be used
64 solely for the payment of the cost of the parkway project or
65 parkway projects for which the bonds were issued, and shall

66 be disbursed in a manner consistent with the resolution
67 authorizing the issuance of the bonds or in the trust agree-
68 ment securing the bonds.

69 (i) If the proceeds of the bonds of any issue, by error of
70 estimates or otherwise, shall be less than the cost, then
71 additional bonds may in like manner be issued to provide the
72 amount of the deficit. Unless otherwise provided in the
73 resolution authorizing the issuance of the bonds or in the
74 trust agreement securing the bonds, the additional bonds
75 shall be ~~deemed~~ considered to be of the same issue and shall
76 be entitled to payment from the same fund without prefer-
77 ence or priority of the bonds first issued.

78 (j) If the proceeds of the bonds of any issue exceed the cost
79 of the parkway project or parkway projects for which the
80 bonds were issued, then the surplus shall be deposited to the
81 credit of the sinking fund for the bonds.

82 (k) Prior to the preparation of definitive bonds, the
83 Parkways Authority may, under like restrictions, issue
84 interim receipts or temporary bonds, with or without
85 coupons, exchangeable for definitive bonds when the bonds
86 have been executed and are available for delivery. The

87 Parkways Authority may also provide for the replacement of
88 any bonds that become mutilated or are destroyed or lost.

89 (l) Bonds may be issued under the provisions of this article
90 without obtaining the consent of any department, division,
91 commission, board, bureau or agency of the state in accor-
92 dance with this article: *Provided*, That the Parkways
93 Authority shall comply with the provisions of section
94 twenty-eight, article one, chapter five of this code.

95 (m) On or before May 1 of each year, the general manager
96 of the Parkways Authority shall certify to the Director of the
97 Water Development Authority and the Trustee of the
98 Parkways Authority's toll revenue bonds: (1) The amount
99 required to be maintained in the debt service reserve fund
100 established in conjunction with said toll revenue bonds; (2)
101 the amount on deposit as of April 1 in said debt service
102 reserve fund; and (3) the difference between the amounts
103 specified in (1) and (2) above, if any.

104 (n) There is hereby created within the Parkways Authority
105 a U. S. Route 35 Toll Revenue Enhancement Fund, which
106 shall be administered by the Parkways Authority and
107 accounted for by the Parkways Authority as a distinct fund
108 separate and apart from all other funds and accounts of the

109 Parkways Authority. The U. S. Route 35 Toll Revenue
110 Enhancement Fund shall be an interest-bearing account
111 with interest earned credited to and deposited back into said
112 fund. All funds transferred to the Parkways Authority
113 pursuant to subsection (b), section eleven, article fifteen-a,
114 chapter thirty-one of this code shall be deposited by the
115 Parkways Authority into the U. S. Route 35 Toll Revenue
116 Enhancement Fund. Funds deposited into the U. S. Route 35
117 Toll Revenue Enhancement Fund shall be invested only in
118 United States Treasury securities or other securities that
119 constitute direct obligations of the United States of America
120 or are directly guaranteed by the United States of America
121 that in any case mature at least five business days prior to
122 the next ensuing June 1.

123 (o) On or before June 1 of each year, the Parkways Author-
124 ity shall transfer all amounts on deposit in the U. S. Route 35
125 Revenue Enhancement Fund to the trustee of the Parkways
126 Authority's toll revenue bonds for deposit into the debt
127 service reserve fund established in conjunction with the
128 Parkways Authority's toll revenue bonds.

129 (p) Notwithstanding any other provision of this article, if
130 and when the trustee for the Parkways Authority's toll

131 revenue bonds shall have sufficient funds and U. S. Treasury
132 securities on hand in a defeasance escrow account and in
133 other available funds and accounts held under the trust
134 indenture by the trustee that can be made available for
135 defeasance of such bonds that, in the aggregate, are suffi-
136 cient to pay all principal of, interest on and applicable
137 premium, if any, on such bonds as and when the same shall
138 become due, the Authority shall direct the trustee to defease
139 such bonds at the first practicable date and time in compli-
140 ance with the applicable trust indenture requirements and
141 federal tax law and regulations and the Authority shall take
142 steps to accomplish such defeasance. Upon such defeasance
143 or the final maturity and final payment of all such bonds,
144 whichever shall first occur, the Authority shall there upon
145 cease to charge and collect tolls along the Authority's U. S.
146 Route 35 parkways project.

CHAPTER 31. CORPORATIONS.

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

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

1 Subsequent to the transfer of \$6 million from the West
2 Virginia Infrastructure Fund for deposit into the West
3 Virginia Infrastructure Lottery Revenue Debt Service Fund,
4 the remaining funds transferred to the West Virginia Infra-
5 structure Fund shall be dedicated as follows:

6 (a) Eighty percent of the funds deposited in the West
7 Virginia Infrastructure Fund shall be dedicated for the
8 purpose of providing funding for the cost of projects as
9 defined in subsection ~~(n)~~ (o), section two of this article.

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

12 (1) Prior to the dedication of any funds for costs of infra-
13 structure projects pursuant to subdivision (2) of this subsec-
14 tion from the amounts transferred in any particular year
15 from the State Excess Lottery Revenue Fund pursuant to
16 section eighteen-a, article twenty-two, chapter twenty-nine
17 of this code, an amount equal to the difference between: (A)
18 The amount required to be maintained in the debt service
19 reserve fund established in conjunction with the Parkways
20 Authority's toll revenue bonds issued to finance a portion of
21 the costs of constructing a portion of the parkways project
22 along U. S. Route 35 between West Virginia Route 859 in

23 Putnam County and County Route 40 in Mason County; and
24 (B) the amount on deposit as of April 1 of each year in said
25 debt service reserve fund, as certified by the general manager
26 of the Parkways Authority to the Water Development
27 Authority and the trustee of the revenue bonds pursuant to
28 subsection (m), section ten, article sixteen-a, chapter
29 seventeen of this code, or \$8 million, whichever is less, is
30 expressly authorized and dedicated and shall be transferred
31 within ten days of receipt of said certification from the West
32 Virginia Infrastructure Fund to the Parkways Authority for
33 deposit into the Route 35 Toll Revenue Enhancement Fund
34 created in subsection (n), section ten, article sixteen-a,
35 chapter seventeen of this code to be further transferred in
36 accordance with subsection (o) of section ten, article sixteen-
37 a, chapter seventeen of this code.

38 (2) Any remaining moneys in the fund under this subdivi-
39 sion shall be dedicated for the purpose of providing funding
40 for costs of infrastructure projects as defined in subsection
41 (l), section two of this article.

42 (c) Project sponsors of infrastructure projects shall follow
43 the application process as established by this article: *Pro-*
44 *vided*, That notwithstanding any provision of this article to

45 the contrary, all applications for any infrastructure project
46 shall be submitted to the executive director of the West
47 Virginia Development Office for review, recommendation
48 and approval regarding infrastructure project funding.