

1 that, in commencing and executing the provisions of this
2 subdivision, the West Virginia Investment Management Board is
3 not and shall not be obligated to sell any investments at a
4 loss or otherwise take any action not in furtherance of its
5 fiduciary duties and obligations in respect of funds and
6 investments under its management and supervision; creating the
7 West Virginia Infrastructure Modernization and Development
8 Special Revenue Fund in the State Treasury; specifying the
9 funding source for the West Virginia Infrastructure
10 Modernization and Development Special Revenue Fund; specifying
11 use of funds in the West Virginia Infrastructure Modernization
12 and Development Special Revenue Fund; providing ability of
13 State Road Fund to accept and expend funds transferred from
14 the West Virginia Infrastructure Modernization and Development
15 Special Revenue Fund; and providing ability of West Virginia
16 Infrastructure Fund to accept and expend funds transferred
17 from the West Virginia Infrastructure Modernization and
18 Development Special Revenue Fund.

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

20 That §11B-2-20 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted; that said code be amended by adding
22 thereto a new section, designated §11B-2-20a; that §17-3-1 of said

1 code be amended and reenacted; and that §31-15A-9 of said code be
2 amended and reenacted, all to read as follows:

3 **CHAPTER 11B. DEPARTMENT OF REVENUE.**

4 **ARTICLE 2. STATE BUDGET OFFICE.**

5 **§11B-2-20. Reduction of appropriations; powers of Governor;**
6 **Revenue Shortfall Reserve Fund and permissible**
7 **expenditures therefrom.**

8 (a) Notwithstanding any provision of this section, the
9 Governor may reduce appropriations according to any of the methods
10 set forth in sections twenty-one and twenty-two of this article.
11 The Governor may, in lieu of imposing a reduction in
12 appropriations, request an appropriation by the Legislature from
13 the Revenue Shortfall Reserve Fund established in this section.

14 (b) A Revenue Shortfall Reserve Fund is hereby continued
15 within the State Treasury. The Revenue Shortfall Reserve Fund
16 shall be funded continuously and on a revolving basis in accordance
17 with this subsection up to an aggregate amount not to exceed
18 ~~thirteen~~ fifteen percent of the total appropriations from the State
19 Fund, General Revenue, for the fiscal year just ended. The Revenue
20 Shortfall Reserve Fund shall be funded as set forth in this
21 subsection from surplus revenues, if any, in the State Fund,
22 General Revenue, as the surplus revenues may accrue from time to

1 time. Within sixty days of the end of each fiscal year, the
2 secretary shall cause to be deposited into the Revenue Shortfall
3 Reserve Fund such amount of the first fifty percent of all surplus
4 revenues, if any, determined to have accrued during the fiscal year
5 just ended, as may be necessary to bring the balance of the Revenue
6 Shortfall Reserve Fund to ~~thirteen~~ fifteen percent of the total
7 appropriations from the State Fund, General Revenue, for the fiscal
8 year just ended. If at the end of any fiscal year the Revenue
9 Shortfall Reserve Fund is funded at an amount equal to or exceeding
10 ~~thirteen~~ fifteen percent of the State's General Revenue Fund budget
11 for the fiscal year just ended, then there shall be no further
12 deposit by the secretary under the provisions of this section of
13 any surplus revenues as set forth in this subsection until that
14 time the Revenue Shortfall Reserve Fund balance is less than
15 ~~thirteen~~ fifteen percent of the total appropriations from the State
16 Fund, General Revenue.

17 (c) Not earlier than November 1 of each calendar year, if the
18 state's fiscal circumstances are such as to otherwise trigger the
19 authority of the Governor to reduce appropriations under this
20 section or section twenty-one or twenty-two of this article, then
21 in that event the Governor may notify the presiding officers of
22 both houses of the Legislature in writing of his or her intention

1 to convene the Legislature pursuant to section nineteen, article VI
2 of the Constitution of West Virginia for the purpose of requesting
3 the introduction of a supplementary appropriation bill or to
4 request a supplementary appropriation bill at the next preceding
5 regular session of the Legislature to draw money from the surplus
6 Revenue Shortfall Reserve Fund to meet any anticipated revenue
7 shortfall. If the Legislature fails to enact a supplementary
8 appropriation from the Revenue Shortfall Reserve Fund during any
9 special legislative session called for the purposes set forth in
10 this section or during the next preceding regular session of the
11 Legislature, then the Governor may proceed with a reduction of
12 appropriations pursuant to sections twenty-one and twenty-two of
13 this article. Should any amount drawn from the Revenue Shortfall
14 Reserve Fund pursuant to an appropriation made by the Legislature
15 prove insufficient to address any anticipated shortfall, then the
16 Governor may also proceed with a reduction of appropriations
17 pursuant to sections twenty-one and twenty-two of this article.

18 (d) Upon the creation of the fund, the Legislature is
19 authorized and may make an appropriation from the Revenue Shortfall
20 Reserve Fund for revenue shortfalls, for emergency revenue needs
21 caused by acts of God or natural disasters or for other fiscal
22 needs as determined solely by the Legislature.

1 (e) Prior to October 31, in any fiscal year in which revenues
2 are inadequate to make timely payments of the state's obligations,
3 the Governor may by executive order, after first notifying the
4 presiding officers of both houses of the Legislature in writing,
5 borrow funds from the Revenue Shortfall Reserve Fund. The amount
6 of funds borrowed under this subsection shall not exceed one and
7 one-half percent of the general revenue estimate for the fiscal
8 year in which the funds are to be borrowed, or the amount the
9 Governor determines is necessary to make timely payment of the
10 state's obligations, whichever is less. Any funds borrowed
11 pursuant to this subsection shall be repaid, without interest, and
12 redeposited to the credit of the Revenue Shortfall Reserve Fund
13 within ninety days of their withdrawal.

14 (f) There is hereby created in the State Treasury the Revenue
15 Shortfall Reserve Fund - Part B. The Revenue Shortfall Reserve
16 Fund - Part B shall consist of moneys transferred from the West
17 Virginia Tobacco Settlement Medical Trust Fund pursuant to the
18 provisions of section two, article eleven-a, chapter four of this
19 code, repayments made of the loan from the West Virginia Tobacco
20 Settlement Medical Trust Fund to the Physician's Mutual Insurance
21 Company pursuant to the provisions of article twenty-f, chapter
22 thirty-three of this code, and all interest and other return earned

1 on the moneys in the Revenue Shortfall Reserve Fund - Part B.
2 Moneys in the Revenue Shortfall Reserve Fund - Part B may be
3 expended solely for the purposes set forth in subsection (d) of
4 this section, subject to the following conditions:

5 (1) Beginning on July 1, 2012, any and all interest and other
6 return earned thereon that may accrue on the moneys in the Revenue
7 Shortfall Reserve Fund - Part B shall be dedicated to and expended
8 for and in support of the federal-state Medicaid program authorized
9 by the Legislature or mandated by the federal government:

10 Provided, That in commencing and executing the provisions of this
11 subdivision, the West Virginia Investment Management Board is not
12 and shall not be obligated to sell any investments at a loss or
13 otherwise take any action not in furtherance of its fiduciary
14 duties and obligations in respect of funds and investments under
15 its management and supervision;

16 ~~(1)~~ (2) No moneys in the Revenue Shortfall Reserve Fund - Part
17 B nor any interest or other return earned thereon may be expended
18 for any purpose unless all moneys in the Revenue Shortfall Reserve
19 Fund described in subsection (b) of this section have first been
20 expended, except that the interest or other return earned on moneys
21 in the Revenue Shortfall Reserve Fund - Part B may be expended as
22 provided in subdivisions ~~(2)~~ (1) and (3) of this subsection; ~~and~~

1 ~~(2)~~ (3) Notwithstanding any other provision of this section to
2 the contrary, the Legislature may appropriate any interest and
3 other return earned thereon that may accrue on the moneys in the
4 Revenue Shortfall Reserve Fund - Part B after June 30, 2025, for
5 expenditure for the purposes set forth in section three, article
6 eleven-a, chapter four of this code; and

7 ~~(3)~~ (4) Any appropriation made from Revenue Shortfall Reserve
8 Fund - Part B shall be made only in instances of revenue shortfalls
9 or fiscal emergencies of an extraordinary nature.

10 (g) Subject to the conditions upon expenditures from the
11 Revenue Shortfall Reserve Fund - Part B prescribed in subsection
12 (f) of this section, in appropriating moneys pursuant to the
13 provisions of this section, the Legislature may in any fiscal year
14 appropriate from the Revenue Shortfall Reserve Fund and the Revenue
15 Shortfall Reserve Fund - Part B a total amount up to, but not
16 exceeding, ten percent of the total appropriations from the State
17 Fund, General Revenue, for the fiscal year just ended.

18 (h) (1) Of the moneys in the Revenue Shortfall Reserve Fund,
19 \$100 million, or such greater amount as may be certified as
20 necessary by the director of the budget for the purposes of
21 subsection (e) of this section, shall be made available to the West
22 Virginia Board of Treasury Investments for management and

1 investment of the moneys in accordance with the provisions of
2 article six-c, chapter twelve of this code. All other moneys in
3 the Revenue Shortfall Reserve Fund shall be made available to the
4 West Virginia Investment Management Board for management and
5 investment of the moneys in accordance with the provisions of
6 article six, chapter twelve of this code. Any balance of the
7 Revenue Shortfall Reserve Fund including accrued interest and other
8 return earned thereon at the end of any fiscal year shall not
9 revert to the General Fund but shall remain in the Revenue
10 Shortfall Reserve Fund for the purposes set forth in this section.

11 (2) All of the moneys in the Revenue Shortfall Reserve Fund -
12 Part B shall be made available to the West Virginia Investment
13 Management Board for management and investment of the moneys in
14 accordance with the provisions of article six, chapter twelve of
15 this code. Any balance of the Revenue Shortfall Reserve Fund -
16 Part B, including accrued interest and other return earned thereon
17 at the end of any fiscal year, shall not revert to the General Fund
18 but shall remain in the Revenue Shortfall Reserve Fund - Part B for
19 the purposes set forth in this section.

20 **§11B-2-20a. West Virginia Infrastructure Modernization and**
21 **Development Special Revenue Fund and permissible**
22 **expenditures therefrom.**

1 (a) There is hereby created in the State Treasury the West
2 Virginia Infrastructure Modernization and Development Special
3 Revenue Fund. The West Virginia Infrastructure Modernization and
4 Development Special Revenue Fund shall be funded on a revolving
5 basis in accordance with this subsection from surplus revenues, if
6 any, in the State Fund, General Revenue, as the surplus revenues
7 may accrue from time to time, subject to the requirements of
8 section twenty of this article. If at the end of any fiscal year
9 there exists surplus revenues in the State Fund, General Revenue,
10 that accrued during the fiscal year just ended, then the secretary
11 shall first cause funds to be deposited into the Revenue Shortfall
12 Reserve Fund pursuant to section twenty of this article. If at the
13 end of any fiscal year the Revenue Shortfall Reserve Fund is funded
14 at an amount equal to or exceeding fifteen percent of the State's
15 General Revenue Fund budget for the fiscal year just ended, then
16 the secretary shall, within sixty days of the end of such fiscal
17 year, cause to be deposited into the West Virginia Infrastructure
18 Modernization and Development Special Revenue Fund the first fifty
19 percent of all surplus revenues, if any, in the State Fund, General
20 Revenue, determined to have accrued during the fiscal year just
21 ended.

22 (b) On October 1 in the fiscal year beginning July 1, 2012,

1 and on October 1 in each subsequent fiscal year thereafter, the
2 secretary shall transfer: (1) Fifty percent of the balance, if any,
3 of the West Virginia Infrastructure Modernization and Development
4 Special Revenue Fund into the West Virginia Infrastructure Fund
5 created in section nine, article fifteen-a, chapter thirty-one of
6 this code to be expended in accordance with the provisions of said
7 article; and (2) fifty percent of the balance, if any, of the West
8 Virginia Infrastructure Modernization and Development Special
9 Revenue Fund into the State Road Fund created in section one,
10 article three, chapter seventeen of this code to be expended in
11 accordance with the provisions of said chapter.

12 **CHAPTER 17. ROADS AND HIGHWAYS.**

13 **ARTICLE 3. STATE ROAD FUND.**

14 **§17-3-1. What constitutes fund; payments into fund; use of money**
15 **in fund.**

16 There shall be a State Road Fund, which shall consist of the
17 proceeds of all state license taxes imposed upon automobiles or
18 other motor or steam driven vehicles; the registration fees imposed
19 upon all owners, chauffeurs, operators and dealers in automobiles
20 or other motor driven vehicles; all sums of money which may be
21 donated to such fund; all proceeds derived from the sale of state
22 bonds issued pursuant to any resolution or act of the Legislature

1 carrying into effect the Better Roads Amendment to the Constitution
2 of this state, adopted in the month of November, 1964, except that
3 the proceeds from the sale of these bonds shall be kept in a
4 separate and distinct account in the State Road Fund; all proceeds
5 from the sale of state bonds issued pursuant to any resolution or
6 act of the Legislature carrying into effect the Safe Roads
7 Amendment of 1996 to the Constitution of this state, adopted in the
8 month of November, 1996, except that the proceeds from the sale of
9 these bonds shall be kept in a separate and distinct account in the
10 State Road Fund; all moneys and funds appropriated to it by the
11 Legislature; and all moneys allotted or appropriated by the federal
12 government to this state for road construction and maintenance
13 pursuant to any act of the Congress of the United States; the
14 proceeds of all taxes imposed upon and collected from any person,
15 firm or corporation and of all taxes or charges imposed upon and
16 collected from any county, district or municipality for the benefit
17 of the fund; the proceeds of all judgments, decrees or awards
18 recovered and collected from any person, firm or corporation for
19 damages done to, or sustained by, any of the state roads or parts
20 thereof; all moneys recovered or received by reason of the
21 violation of any contract respecting the building, construction or
22 maintenance of any state road; all penalties and forfeitures

1 imposed, recovered or received by reason thereof; all funds
2 transferred in accordance with section twenty-a, article two,
3 chapter eleven-b of this code; and any and all other moneys and
4 funds appropriated to, imposed and collected for the benefit of
5 such fund, or collected by virtue of any statute and payable to
6 such fund: *Provided,* That notwithstanding any provisions of this
7 code to the contrary, fifty cents of every license fee paid
8 pursuant to the provisions of subdivision (2), subsection (a),
9 section eight, article two, chapter seventeen-b of this code shall
10 be paid to the special fund established pursuant to the provisions
11 of subsection (a), section twelve, article two, chapter three of
12 this code.

13 When any money is collected from any of the sources aforesaid,
14 it shall be paid into the State Treasury by the officer whose duty
15 it is to collect and account for the same, and credited to the
16 State Road Fund, and shall be used only for the purposes named in
17 this chapter, which are: (a) To pay the principal and interest due
18 on all state bonds issued for the benefit of said fund, and set
19 aside and appropriated for that purpose; (b) to pay the expenses of
20 the administration of the road department; and (c) to pay the cost
21 of maintenance, construction, reconstruction and improvement of all
22 state roads.

1 **CHAPTER 31. CORPORATIONS.**

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

4 **§31-15A-9. Infrastructure fund; deposits in fund; disbursements**
5 **to provide loans, loan guarantees, grants and other**
6 **assistance; loans, loan guarantees, grants and other**
7 **assistance shall be subject to assistance**
8 **agreements; West Virginia Infrastructure Lottery**
9 **Revenue Debt Service Fund; use of funds for**
10 **projects.**

11 (a) The Water Development Authority shall create and establish
12 a special revolving fund of moneys made available by appropriation,
13 grant, contribution or loan to be known as the West Virginia
14 Infrastructure Fund. This fund shall be governed, administered and
15 accounted for by the directors, officers and managerial staff of
16 the Water Development Authority as a special purpose account
17 separate and distinct from any other moneys, funds or funds owned
18 and managed by the Water Development Authority. The Infrastructure
19 Fund shall consist of subaccounts, as deemed necessary by the
20 council or the Water Development Authority, for the deposit of: (1)
21 Infrastructure revenues; (2) any appropriations, grants, gifts,
22 contributions, loan proceeds or other revenues received by the

1 Infrastructure Fund from any source, public or private; (3) amounts
2 received as payments on any loans made by the Water Development
3 Authority to pay for the cost of a project or infrastructure
4 project; (4) insurance proceeds payable to the Water Development
5 Authority or the Infrastructure Fund in connection with any
6 infrastructure project or project; (5) all income earned on moneys
7 held in the Infrastructure Fund; (6) all funds deposited in
8 accordance with section four of article fifteen-b; ~~and~~ (7) all
9 proceeds derived from the sale of bonds issued pursuant to article
10 fifteen-b of this chapter; and (8) all funds transferred in
11 accordance with section twenty-a, article two, chapter eleven-b of
12 this code.

13 Any money collected pursuant to this section shall be paid
14 into the West Virginia Infrastructure Fund by the state agent or
15 entity charged with the collection of the same, credited to the
16 Infrastructure Fund, and used only for purposes set forth in this
17 article or article fifteen-b.

18 Amounts in the Infrastructure Fund shall be segregated and
19 administered by the Water Development Authority separate and apart
20 from its other assets and programs. Amounts in the Infrastructure
21 Fund may not be transferred to any other fund or account or used,
22 other than indirectly, for the purposes of any other program of the

1 Water Development Authority, except that the Water Development
2 Authority may use funds in the Infrastructure Fund to reimburse
3 itself for any administrative costs incurred by it and approved by
4 the council in connection with any loan, loan guarantee, grant or
5 other funding assistance made by the Water Development Authority
6 pursuant to this article.

7 (b) Notwithstanding any provision of this code to the
8 contrary, amounts in the Infrastructure Fund shall be deposited by
9 the Water Development Authority in one or more banking
10 institutions: *Provided*, That any moneys so deposited shall be
11 deposited in a banking institution located in this state. The
12 banking institution shall be selected by the Water Development
13 Authority by competitive bid. Pending the disbursement of any money
14 from the Infrastructure Fund as authorized under this section, the
15 Water Development Authority shall invest and reinvest the moneys
16 subject to the limitations set forth in article eighteen, chapter
17 thirty-one of this code.

18 (c) To further accomplish the purposes and intent of this
19 article and article fifteen-b of this chapter, the Water
20 Development Authority may pledge infrastructure revenues and from
21 time to time establish one or more restricted accounts within the
22 Infrastructure Fund for the purpose of providing funds to guarantee

1 loans for infrastructure projects or projects: *Provided, however,*
2 That for any fiscal year the Water Development Authority may not
3 deposit into the restricted accounts more than twenty percent of
4 the aggregate amount of infrastructure revenues deposited into the
5 Infrastructure Fund during the fiscal year. No loan guarantee shall
6 be made pursuant to this article unless recourse under the loan
7 guarantee is limited solely to amounts in the restricted account or
8 accounts. No person shall have any recourse to any restricted
9 accounts established pursuant to this subsection other than those
10 persons to whom the loan guarantee or guarantees have been made.

11 (d) Each loan, loan guarantee, grant or other assistance made
12 or provided by the Water Development Authority shall be evidenced
13 by a loan, loan guarantee, grant or assistance agreement between
14 the Water Development Authority and the project sponsor to which
15 the loan, loan guarantee, grant or assistance shall be made or
16 provided, which agreement shall include, without limitation and to
17 the extent applicable, the following provisions:

18 (1) The estimated cost of the infrastructure project or
19 project, the amount of the loan, loan guarantee or grant or the
20 nature of the assistance, and in the case of a loan or loan
21 guarantee, the terms of repayment and the security therefor, if
22 any;

1 (2) The specific purposes for which the loan or grant proceed
2 shall be expended or the benefits to accrue from the loan guarantee
3 or other assistance, and the conditions and procedure for
4 disbursing loan or grant proceeds;

5 (3) The duties and obligations imposed regarding the
6 acquisition, construction, improvement or operation of the project
7 or infrastructure project; and

8 (4) The agreement of the governmental agency to comply with
9 all applicable federal and state laws, and all rules and
10 regulations issued or imposed by the Water Development Authority or
11 other state, federal or local bodies regarding the acquisition,
12 construction, improvement or operation of the infrastructure
13 project or project and granting the Water Development Authority the
14 right to appoint a receiver for the project or infrastructure if
15 the project sponsor should default on any terms of the agreement.

16 (e) Any resolution of the Water Development Authority
17 approving loan, loan guarantee, grant or other assistance shall
18 include a finding and determination that the requirements of this
19 section have been met.

20 (f) The interest rate on any loan to governmental, quasi-
21 governmental or not-for-profit project sponsors for projects made
22 pursuant to this article shall not exceed three percent per annum.

1 Due to the limited availability of funds available for loans for
2 projects, it is the public policy of this state to prioritize
3 funding needs to first meet the needs of governmental, quasi-
4 governmental and not-for-profit project sponsors and to require
5 that loans made to for-profit entities shall bear interest at the
6 current market rates. Therefore, no loan may be made by the council
7 to a for-profit entity at an interest rate which is less than the
8 current market rate at the time of the loan agreement.

9 (g) The Water Development Authority shall cause an annual
10 audit to be made by an independent certified public accountant of
11 its books, accounts and records, with respect to the receipts,
12 disbursements, contracts, leases, assignments, loans, grants and
13 all other matters relating to the financial operation of the
14 Infrastructure Fund, including the operating of any subaccount
15 within the Infrastructure Fund. The person performing such audit
16 shall furnish copies of the audit report to the commissioner of
17 finance and administration, where they shall be placed on file and
18 made available for inspection by the general public. The person
19 performing such audit shall also furnish copies of the audit report
20 to the Legislature's Joint Committee on Government and Finance.

21 (h) There is hereby created in the Water Development Authority
22 a separate, special account which shall be designated and known as

1 the West Virginia Infrastructure Lottery Revenue Debt Service Fund,
2 into which shall be deposited annually for the fiscal year
3 beginning July 1, 2011, and each fiscal year thereafter, the first
4 \$6 million transferred pursuant to section eighteen-d, article
5 twenty-two, chapter twenty-nine of this code and any other funds
6 provided therefor: *Provided*, That such deposits and transfers are
7 not subject to the reservations of funds or requirements for
8 distributions of funds established by sections ten and eleven of
9 this article. Moneys in the West Virginia Infrastructure Lottery
10 Revenue Debt Service Fund shall be used to pay debt service on
11 bonds or notes issued by the Water Development Authority for
12 watershed compliance projects as provided in section seventeen-b of
13 this article, and to the extent not needed to pay debt service, for
14 the design or construction of improvements for watershed compliance
15 projects. Moneys in the West Virginia Infrastructure Lottery
16 Revenue Debt Service Fund not expended at the close of the fiscal
17 year do not lapse or revert to the General Fund but are carried
18 forward to the next fiscal year.

(NOTE: The purpose of this bill is to increase the maximum aggregate funding amount from 13% to 15% for the Revenue Shortfall Reserve Fund; dedicate all interest and other earnings on moneys in Revenue Shortfall Reserve Fund - Part B to the State's Medicaid program; create the West Virginia Infrastructure Modernization and

Development Special Revenue Fund in the State Treasury; specify the funding source for the West Virginia Infrastructure Modernization and Development Special Revenue Fund; specify the use of funds in the West Virginia Infrastructure Modernization and Development Special Revenue Fund; provide ability of State Road Fund to accept and expend funds transferred from the West Virginia Infrastructure Modernization and Development Special Revenue Fund; and provide ability of West Virginia Infrastructure Fund to accept and expend funds transferred from the West Virginia Modernization and Development Special Revenue Fund.

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

§11B-2-20a is new; therefore, strike-throughs and underscoring have been omitted.)