

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4009

(BY DELEGATES STATLER, AMBLER, COOPER, ELLINGTON,
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AND ZATEZALO)

[Originating in the Committee on Finance,
February 22, 2016.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-
3 27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17,
4 §7-27-18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-
5 27-26, §7-27-27, §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34,
6 §7-27-35, §7-27-36, §7-27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-
7 27-43, §7-27-44 §7-27-45 and §7-27-46, all relating to road construction projects;
8 providing legislative purpose and findings; defining terms; authorizing county commissions
9 to develop road construction project plans; specifying process for development and
10 approval of road construction project plans and plan amendments; allowing joint road
11 construction project plans; requiring referendum for approval of certain road construction
12 project plans; providing for amendments to road construction plans; requiring county
13 commissions to submit road construction project plans and plan amendments to
14 Commissioner of Highways for approval; specifying contents of application and approval
15 process; creating new account and subaccounts in State Road Fund; allowing road
16 construction projects be financed on cash basis or by special revenue bonds issued by
17 Commissioner of Highways; giving Commissioner of Highways jurisdiction over all road
18 construction projects accepted into state road system; specifying that road construction
19 projects are public improvements; requiring annual reporting by Commissioner of
20 Highways on county road construction projects; providing procedures and requirements
21 for issuance of special revenue bonds and refunding bonds for county road construction
22 projects; providing that bonds are not debts of state, county or any political subdivisions,
23 are negotiable instruments and are exempt from taxation; specifying that persons
24 executing bonds have no personal liability; providing that powers relating to road
25 construction project plans, construction of projects and issuance of special revenue bonds
26 are additional powers; allowing county commissions with approved road construction

27 projects to impose county transportation sales and use taxes; limiting rate of taxes;
28 requiring transactions and uses subject or exempt from county sales and use taxes to
29 conform to state consumers sales and service tax and use tax requirements except that
30 county tax may not apply to sales of motor vehicles, motor fuels or to purchases where
31 local taxation is prohibited by federal law; requiring Tax Commissioner to administer,
32 collect and enforce county transportation sales and use tax and, for that purpose,
33 specifying a fee allowed for commissioner's services; making county transportation sales
34 and use taxes subject to West Virginia Tax Procedure and Administration Act and to West
35 Virginia Tax Crimes and Penalties Act; requiring that definitions, taxable transactions and
36 exemptions from county transportation sales and use taxes automatically update when
37 state consumers sales and service tax and use tax laws are amended; requiring county
38 commissions to develop and maintain county rate and boundary databases; requiring
39 county commission to notify Tax Commissioner if tax has been imposed or tax rate has
40 changed; specifying when collection of county transportation sales and use taxes begins;
41 requiring that net collection of county transportation sales and use taxes be deposited in
42 subaccount of county in county road improvement account in the State Road Fund;
43 providing that all powers are supplemental; exempting public officers from personal
44 liability; providing for severability; providing criminal penalties; and providing
45 Commissioner of Highways with authority to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-
3 27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-
4 27-18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-
5 27-27, §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-

6 27-36, §7-27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44, 217-
7 27-45 and §7-27-46, all to read as follows:

ARTICLE 27. LETTING OUR COUNTIES ACT LOCALLY ACT.

PART I. GENERAL.

§7-27-1. Short title.

1 This article shall be known as the “Letting Our Counties Act Locally Act.”

§7-27-2. Purpose and findings.

1 (a) The purpose of this article is to provide county commissions with a source of funding
2 to finance: (1) The accelerated construction of new roads and bridges in their respective counties;
3 and (2) the accelerated upgrading or modernizing of existing state roads and bridges in their
4 counties, by allowing them to impose transportation sales and use taxes as provided in this article.

5 (b) The Legislature hereby makes the following findings:

6 (1) Roads maintained by the Department of Transportation include:

7 (A) Thirty-eight thousand six hundred eighty-four miles of public roads (2012 Public
8 Certified Mileage);

9 (B) Thirty-five thousand eight hundred ninety-three miles of state owned highways;

10 (C) Four hundred sixty-eight miles of state owned Interstate highway;

11 (D) Eighty-eight miles of West Virginia Turnpike;

12 (E) One thousand nine hundred seventy-two miles included in the National Highway
13 System, twenty-three miles of which are connectors to other modes of transportation such as
14 airports, trains and buses;

15 (F) Six thousand nine hundred fourteen bridges of which thirty-three percent are more
16 than one hundred feet in length;

17 (G) One all American road;

18 (H) Five national byways;

- 19 (I) Fourteen state byways; and
- 20 (J) Eight backways.
- 21 (2) A 2012 road needs assessment prepared for Governor Tomblin's Blue Ribbon
22 Commission by Wilbur Smith Associates reveals that during the next seventeen years:
- 23 (A) Fifty-one thousand one hundred eight lane miles of road will need to be improved;
- 24 (B) Ten thousand four hundred one lane miles will need modernization improvements
25 including lane widening, road reconstruction, and shoulder improvements;
- 26 (C) Three thousand four hundred two lane miles will need to be constructed;
- 27 (3) The needs assessment concluded that over a twenty-five year period:
- 28 (A) Eight hundred fourteen bridges will need to be replaced;
- 29 (B) Five hundred seventy-seven bridges will need to be widened;
- 30 (C) Eight bridges will need to be straightened; and
- 31 (D) One bridge will need to be raised.
- 32 (4) The needs assessment projected the funding gap for road construction and
33 maintenance over the next twenty-five years was estimated to be \$36.7 billion, excluding new
34 road construction; and
- 35 (5) The needs assessment also projected that the funding gap for bridges construction
36 and maintenance was \$2.4 billion, excluding new bridge construction.
- 37 (6) Modern, safe roads are critical to economic development;
- 38 (7) Modern, safe roads and bridges are essential to the growth of our communities and to
39 the public health, welfare and safety;
- 40 (8) Counties need greater ability to influence when and where new roads are constructed
41 and existing roads and bridges are modernized or upgraded; and
- 42 (9) Significant ways to provide county commissions with the opportunity to influence when
43 and where roads and bridges are constructed, reconstructed, replaced, modernized or upgraded

44 include the ability to recommend to the Division of Highways road and bridge construction projects
45 and to assist in the financing of those projects.

§7-27-3. Definitions.

1 For purposes of this article:

2 (1) "Business" means any activity engaged in by any person, or caused to be engaged in
3 by any person, with the object of direct or indirect economic gain, benefit or advantage, and
4 includes any purposeful revenue generating activity in a county of this state that imposes
5 transportation sales and use taxes pursuant to this article.

6 (2) "Categories of road construction projects" include, and are limited to, preservation
7 projects, modernization projects and expansion projects.

8 (A) "Preservation projects" are road and bridge construction projects that take care of what
9 is already in place and include, but are not limited to, pavement rehabilitation and reconstruction,
10 and bridge repairs and replacements.

11 (B) "Modernization projects" are road and bridge construction projects that improve safety
12 by improving the existing roadway including, but not limited to, shoulder improvements, reducing
13 the grade of hills, straightening curves, and improving interchanges.

14 (C) "Expansion projects" are road and bridge construction projects that add to the existing
15 road system and include, but are not limited to, new roads, new bridges, new lanes and new
16 interchanges.

17 (3) "Commissioner of Highways" means the chief executive officer of the Division of
18 Highways of the Department of Transportation provided in section one, article two-a, chapter
19 seventeen of this code, or his or her designee. The term "designee" in the phrase "or his or her
20 designee", when used in reference to the Commissioner of Highways, means any officer or
21 employee of the Division of Highways duly authorized by the commissioner directly, or indirectly
22 by one or more redelegations of authority, to perform the functions mentioned or described in this
23 article or rules promulgated for this article.

24 (4) “Computer software” means “computer software” as defined in section two, article
25 fifteen-b, chapter eleven of this code.

26 (5) “Consumer” means any person purchasing tangible personal property, custom
27 software or a taxable service from a retailer as defined in subdivision (17) of this section or from
28 a seller as defined in section two, article fifteen-b, chapter eleven of this code.

29 (6) “County commission” means the governing body of a county of this state.

30 (7) “County transportation sales tax” means the transportation sales tax imposed by a
31 county commission pursuant to this article.

32 (8) “County transportation sales and use taxes” means the county transportation sales tax
33 and the county transportation use tax imposed by a county commission pursuant to this article.

34 (9) “County transportation use tax” means the transportation use tax imposed by a county
35 commission pursuant to this article.

36 (10) “Custom software” means software prepared for a particular customer to meet the
37 specific needs or circumstances of the customer.

38 (11) “Highway authority” or “highway association” means any entity created by the
39 Legislature for the advancement and improvement of the state road and highway system,
40 including, but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway
41 Association, Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields
42 Expressway Authority, Robert C. Byrd Corridor H Highway Authority, West Virginia 2 and I-68
43 Authority, Little Kanawha River Parkway Authority, King Coal Highway Authority, Coal Heritage
44 Highway Authority, Blue and Gray Intermodal Highway Authority and the West Virginia Eastern
45 Panhandle Transportation Authority or, if an authority is abolished, any entity succeeding to the
46 principal functions of the highway authority or to whom the powers given to the highway authority
47 are given by law.

48 (12) “Lease” means “lease” as defined in section two, article fifteen-b, chapter eleven of
49 this code;

50 (13) "Person" includes any individual, firm, partnership, joint venture, joint stock company,
51 association, public or private corporation, limited liability company, limited liability partnership,
52 cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary,
53 any representative appointed by order of any court or otherwise acting on behalf of others, or any
54 other group or combination acting as a unit and the plural as well as the singular number.

55 (14) "Project costs" means capital costs, costs of financing, planning, designing,
56 constructing, expanding, improving, or maintaining a road, the cost of land, equipment,
57 machinery, installation of utilities and other similar expenditures and all other charges or expenses
58 necessary, appurtenant or incidental to the foregoing.

59 (15) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any
60 manner or by any means, for a consideration.

61 (16) "Purchase price" means "purchase price" as defined in section two, article fifteen-b,
62 chapter eleven of this code;

63 (17) "Purchaser" means a person to whom a sale of personal property is made or to whom
64 a service is furnished.

65 (18) "Retailer" means and includes every person engaging in the business of selling,
66 leasing or renting tangible personal property or custom software or furnishing a taxable service
67 for use within the meaning of this article, or in the business of selling, at auction, tangible personal
68 property or custom software owned by the person or others for use in the county imposing taxes
69 pursuant to this article. However, when, in the opinion of the Tax Commissioner, it is necessary
70 for the efficient administration of county use taxes imposed pursuant to this article to regard any
71 salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers,
72 distributors, supervisors, employees or persons under whom they operate or from whom they
73 obtain the tangible personal property sold by them, irrespective of whether they are making sales
74 on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons,

75 the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors,
76 employers, or persons as retailers for purposes of county use taxes.

77 (19) "Retailer engaging in business in the county" or any like term, unless otherwise limited
78 by federal statute, means and includes, but is not limited to:

79 (A) Any retailer having or maintaining, occupying or using, within the county, directly or by
80 a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or
81 any agent (by whatever name called) operating within the county under the authority of the retailer
82 or its subsidiary, irrespective of whether the place of business or agent is located in the county
83 permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within
84 this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter
85 thirty-one-e of this code; or

86 (B) Any retailer that is related to, or part of a unitary business with, a person, entity or
87 business that, without regard to whether the retailer is admitted to do business in this state
88 pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e
89 of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related
90 entity, a related member or part of a unitary business, all as defined in section three-a, article
91 twenty four, chapter eleven of this code, that:

92 (i) Pursuant to an agreement with or in cooperation with the related retailer, maintains an
93 office, distribution house, sales house, warehouse or other place of business in the county;

94 (ii) Performs services in the county in connection with tangible personal property or
95 services sold by the retailer, or any related entity, related member or part of the unitary business;

96 (iii) By any agent, or representative (by whatever name called), or employee, performs
97 services in the county in connection with tangible personal property or services sold by the retailer,
98 or any related entity, related member or part of the unitary business; or

99 (iv) Directly or indirectly, through or by an agent, representative or employee located in,
100 or present in, the county, solicits business in the county for or on behalf of the retailer, or any
101 related entity, related member or part of the unitary business.

102 (C) For purposes of paragraph (B) of this subdivision, the term “service” means and
103 includes, but is not limited to, customer support services, help desk services, call center services,
104 repair services, engineering services, installation service, assembly service, delivery service by
105 means other than common carrier or the United States Postal Service, technical assistance
106 services, the service of investigating, handling or otherwise assisting in resolving customer issues
107 or complaints while in the county, the service of operating a mail order business or telephone,
108 Internet or other remote order business from facilities located within the county, the service of
109 operating a website or Internet-based business from a location within the county imposing the use
110 tax or any other service.

111 (20) “Retail sale” or “sale at retail” mean “retail sale” and “sales at retail” as defined in
112 section two, article fifteen-b, chapter eleven of this code.

113 (21) “Road” means a public highway, road, bridge, tunnel, or overpass to be used for the
114 transportation of persons or goods including bicycle and pedestrian facilities.

115 (22) “Road project” means any project to acquire, design, construct, expand, renovate,
116 extend, enlarge, increase, equip, improve, maintain or operate a road in this state, including, but
117 not limited to, providing bicycle and pedestrian facilities in conjunction with a road in this state,
118 that is under the jurisdiction of the Division of Highways.

119 (23) “Road construction project” means and includes any road construction project
120 included in a road construction project plan that is adopted by a county commission pursuant to
121 this article and approved by the Commissioner of Highways as provided in this article.

122 (24) “Sale” means any transaction resulting in the purchase or lease of tangible personal
123 property, custom software or a taxable service from a retailer.

124 (25) "Sales price" means "sales price" as defined in section two, article fifteen-b, chapter
125 eleven of this code.

126 (26) "Sales tax" or "Transportation sales tax" means the transportation sales and service
127 tax imposed by a county commission pursuant to this article on sales of tangible personal property
128 or custom software and on the furnishing of taxable services.

129 (27) "Seller" means "seller" as defined in section two, article fifteen-b, chapter eleven of
130 this code.

131 (28) "Service" or "selected service" mean "service" or "selected service" as defined in
132 section two, article fifteen-b, chapter eleven of this code.

133 (29) "Tangible personal property" means "tangible personal property as defined in section
134 two, article fifteen-b, chapter eleven of this code.

135 (30) "Tax" means a transportation sales or a transportation use tax imposed by a county
136 commission pursuant to this article and includes additions to tax, interest and penalties levied
137 under article ten, chapter eleven of this code.

138 (31) "Tax Commissioner" means the State Tax Commissioner provided in article one,
139 chapter eleven of this code or his or her delegate. The term "delegate" in the phrase "or his or
140 her delegate", when used in reference to the Tax Commissioner, means any officer or employee
141 of the state Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or
142 more redelegations of authority, to perform the functions mentioned or described in this article or
143 rules promulgated for this article.

144 (32) "Taxpayer" means "taxpayer" as defined in section two, article fifteen-b, chapter
145 eleven of this code, who is subject to a transportation sales tax or a transportation use tax imposed
146 by a county commission pursuant to this article, whether acting for himself or herself or as a
147 fiduciary, and who is liable for payment of any additions to tax, penalties or interest imposed by
148 article ten, chapter eleven of this code for failure to timely pay or remit transportation sales taxes
149 or transportation use taxes imposed by a county commission pursuant to this article.

150 (33) “The code” or “this code” means the Code of West Virginia, 1931, as amended by the
 151 Legislature.

152 (34) “This state” means the State of West Virginia.

153 (35) “Use tax” or “Transportation use tax” means the county transportation use tax
 154 imposed by a county commission pursuant to this article on the use in the county of tangible
 155 personal property, custom software or the results of a taxable service upon which the county
 156 transportation sales tax was not paid.

157 (36) “Vendor” means any person furnishing services subject to a county’s sales and use
 158 taxes imposed pursuant to this article, or making sales of tangible personal property or custom
 159 software subject to a county’s sales and use taxes imposed pursuant to this article. The terms
 160 “vendor,” “retailer” and “seller” are used interchangeably in this article.

PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

§7-27-4. Creation of county road construction project plan.

1 County commissions, upon their own initiative or upon application of: (1) A highway
 2 authority; (2) a local, county or regional economic development authority; or (3) any resident of
 3 the county, may propose creation of a road construction project plan for the county, or propose
 4 an amendment to an existing road construction project plan of the county.

§7-27-5. Public hearing and notice requirements.

1 (a) *General.* – The county commission shall hold one or more public hearings at which
 2 interested persons may express their views on the county’s proposed road construction project
 3 plan.

4 (b) *Notice of public hearing.* – Notice of the public hearing or hearings shall be published
 5 as a Class II legal advertisement in accordance with the requirements of article three, chapter
 6 fifty-nine of this code. The published notice shall include, at a minimum:

7 (1) The date, time, place and purpose of the public hearing or hearings;

8 (2) A description of each road construction project included in the proposed road
9 construction project plan in sufficient detail to give the public notice of the contents of the proposed
10 road construction project plan to cause residents of the county and other interested persons to
11 examine the proposed road construction project plan and attend the public hearing or submit
12 written comments thereon;

13 (3) Identify the places in the county where the proposed road construction project plan
14 may be viewed: *Provided*, That the county commission shall include the proposed road
15 construction project plan on its webpage; and

16 (4) Provide information regarding how the county commission anticipates funding the road
17 construction projects contained in the road construction project plan, including, but not limited to,
18 whether one or more projects in the proposed road construction project plan, will be financed, in
19 whole or in part, by the imposition of a county transportation sales tax and a county transportation
20 use tax and the proposed rate of the taxes the county finds necessary to finance, in whole or in
21 part, the proposed road construction project plan.

22 (c) *Notice by mail.* – On or before the first day of publication of the public notice required
23 in subsection (b) of this section, the county commission shall send a copy of the notice by
24 first-class mail to the Commissioner of Highways, the Director of the West Virginia Development
25 Office and to the mayor of each municipality located within the county. Additionally, when the
26 county commission reasonably anticipates that a proposed road construction project may affect
27 a bordering county, it shall send a copy of the notice by first-class mail to the president of the
28 county commission of the bordering county or counties.

29 (d) *Public Hearing.* – All persons who appear at any public hearing required by this section
30 shall be afforded a reasonable opportunity to express their views on all or any part of the proposed
31 road construction project plan. Each public hearing shall be recorded by a court reporter, or be
32 digitally recorded.

33 (e) Written comments. – Additionally, written comments may be submitted to the county
 34 commission before, during or within five business days after the public hearing. Timely mailing
 35 of the written comments to the county commission, at the mailing address of the courthouse,
 36 postage prepaid, shall be deemed timely submission of the written comments.

§7-27-6. Finalization of road construction project plan.

1 (a) Resolution of county commission. – After both the public hearing and the public
 2 comment period closes, and after receipt of any required resolution of the governing body of a
 3 municipality, as required in subsection (b) of this section, the county commission may, by
 4 resolution, finalize its roads construction project plan: *Provided*, That if there is more than one
 5 road construction project in its road construction project plan, the road construction project plan
 6 shall include a prioritization of each road construction project. This resolution shall also authorize
 7 the submission of the road construction project plan to the voters of the county by referendum if
 8 the road construction project plan is to be financed, in whole or in part, by a county transportation
 9 sales tax and a county transportation use tax or by the issuing of special revenue bonds
 10 authorized by this article.

11 (b) Consent of municipality in which project located. – No county commission may adopt
 12 a resolution approving a road construction project plan any portion of which is located within the
 13 boundaries of a Class I, II, III or IV municipality, without the adoption of a resolution by the
 14 governing body of that municipality consenting to the road construction project.

§7-27-7. Requirement for referendum on final road construction project plan.

1 (a) The county commission shall submit the question of the adoption of a road construction
 2 project plan to the voters in a county-wide referendum to be held in conjunction with a primary or
 3 general election. The question to be voted on in the referendum shall identify the project plan by
 4 its name and location, its projected cost estimate and how the cost of the road construction project
 5 plan is to be financed. The question shall state if the road construction plan is to be financed in
 6 whole or in part by the imposition of a county transportation sales and use tax, including the rate

7 of the tax to be imposed, and if it is to be financed in whole or in part by the issuance of special
8 revenue bonds as authorized by this article.

9 (b) No county commission may proceed with a road construction plan which will be
10 financed, in whole or in part, by the imposition of a transportation sales and use tax or by the
11 issuance of special revenue bonds as authorized by this article unless the sixty percent of the
12 voters of casting voting in the referendum vote to approve the road construction project plan.

13 (c) Upon approval of a road construction project plan by referendum, the county
14 commission may submit its plan to the Commissioner of Highways for his or her review and
15 approval as provided by this article.

§7-27-8. Joint road construction projects.

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit
2 from coordinated road construction efforts by county commissions that impose transportation
3 sales and use taxes pursuant to this article.

4 (b) Notwithstanding any other section of this code to the contrary, any two or more county
5 commissions may contract to share expenses for and to dedicate county funds or to dedicate
6 transportation sales tax or transportation use tax revenues, on a pro rata basis, to facilitate
7 construction of road construction projects: *Provided*, That the road construction projects must be
8 a part of a road construction project plan created and approved pursuant to this article by each
9 county commission contracting to share expenses and funds.

10 (c) When a road construction project begins in one county and ends in one or more other
11 counties of this state, the county commission of each county may, by resolution, adopt a written
12 intergovernmental agreement with each county and the Commissioner of Highways regarding the
13 proposed multicounty road construction project.

14 (d) No county commission may withdraw from an intergovernmental agreement as long
15 as revenue bonds remain outstanding, the proceeds of which were used by the Commissioner of
16 Highways to finance construction of the road.

17 (e) No withdrawing county commission may be entitled to the return of any money or
18 property advanced to the road construction project.

19 (f) Notwithstanding any provision of this code to the contrary, any county commission
20 imposing transportation sales and use taxes pursuant to this article may agree with one or more
21 other counties that also impose transportation sales and use taxes pursuant to this article that
22 have an interest in completion of a proposed road construction project, may enter into an
23 intergovernmental agreement with respect to the pooling of transportation sales and use tax
24 revenues to finance construction of the road construction project either on a cash basis or to pay
25 debt service on revenue bonds issued by the Commissioner of Highways to fund the road
26 construction project.

27 (g) The obligations of the parties under any intergovernmental agreement executed
28 pursuant to this article may not be considered debt within the meaning of sections six or eight,
29 article X of the Constitution of West Virginia.

30 (h) Any intergovernmental agreement shall be approved by resolution adopted by a
31 majority vote of the county commission of each county participating in the agreement and by the
32 Commissioner of Highways. After the resolution is adopted, the agreement shall be signed by at
33 least one member of the county commission and by the Commissioner of Highways.

34 (i) The Commissioner of Highways may enter into intergovernmental agreements with
35 county commissions or other political subdivisions of the state, or with the federal government or
36 any agency thereof, respecting the financing, planning, and construction of roads and bridges
37 constructed pursuant to this article.

§7-27-9. Amendment of road construction project plan.

1 (a) General. – A road construction project plan adopted by order of the county commission
2 may be amended by the county commission at any time to add one or more projects, or delete
3 one or more projects, or redesignate the order in which projects are to be completed as funds
4 become available: *Provided*, That once a particular road construction project has been approved

5 by the Commissioner of Highways and an intergovernmental agreement is executed as provided
6 in this article for that project, the project may not be revised by the county commission without the
7 express written approval of the Commissioner of Highways.

8 (b) Procedure to amend project plan. – The procedures in this article that apply to creation
9 of a road construction project plan shall also apply to each proposed amendment to the adopted
10 road construction project plan.

§7-27-10. Order adopting road construction project plan or plan amendment.

1 (a) A road construction project plan, or an amendment to an existing project plan, may not
2 be adopted by order of the county commission until after the project plan, or the plan amendment,
3 has been approved by the Commissioner of Highways.

4 (b) Upon approval of a road construction project plan, or a plan amendment, by the
5 Commissioner of Highways, the county commission may enter an order that:

6 (1) Describes each approved road construction project sufficiently to identify with ordinary
7 and reasonable certainty the geographic location in the county of each road construction project
8 included in the county's plan;

9 (2) Assigns a name to the road construction project for identification purposes, which
10 name shall be the name given to the project by the Commissioner of Highways should the
11 commissioner assign a name to the project.

12 (A) The name may include a geographic or other designation; and

13 (B) In addition to the project name, the project shall be assigned a project number that
14 begins with the federal information processing code number (FIPS code number) for the county
15 followed by a hyphen and a consecutive number beginning with the number "01". Each additional
16 road construction project in the county approved by the Commissioner of Highways shall be
17 assigned the next consecutive number.

18 (3) Establishes a county transportation sales tax and a county transportation use tax as
19 provided in this article at rates not to exceed one percent. However, the rate of the sales tax and
20 the rate of the use tax shall at all times be identical.

§7-27-11. Termination of road construction project plan.

1 (a) General. – No road construction project plan may be in existence for a period longer
2 than thirty years, except as otherwise provided in this section, and no revenue bonds secured by
3 collections of the taxes imposed by a county commission pursuant to this article may have a final
4 maturity date of more than thirty years after date of issuance of the revenue bonds.

5 (b) Extension of plan. – Each amendment of a county's roads construction project plan
6 approved by the Commissioner of Highways that results in execution of an intergovernmental
7 agreement by the county commission and the Commissioner of Highways shall extend the term
8 of the project plan for another thirty years beginning with the day the last party to sign, signs that
9 intergovernmental agreement.

10 (c) Termination of transportation sales and use taxes. – The transportation sales and use
11 taxes imposed by a county commission pursuant to this article to finance, in whole or in part, the
12 county's road construction project plan shall expire on the first day of the calendar quarter that
13 begins one hundred twenty days after the later of: (1) If no special revenue bonds are issued as
14 authorized by this article, the day the county commission notifies the Tax Commissioner in writing
15 that its road construction projects financed, in whole or in part, with transportation sales and use
16 tax revenue have been completed; or (2) if special revenue bonds have been issued as authorized
17 by this article, the Commissioner of Highways certifies to the county commission and to the Tax
18 Commissioner that all principal and interest due, or to become due, on the bonds issued under
19 this article to finance the road construction project or projects has been paid or is provided for.

20 (d) Shorter period. – The county commission creating the road construction project plan
21 financed, in whole or in part, by transportation sales and use tax revenues may set a shorter
22 period for the existence of the taxes. However, no revenue bonds may have a final maturity date

23 later than the termination date of the county's transportation sales and use taxes imposed
 24 pursuant to this article.

25 (e) Termination order. – Prior to expiration of the county's transportation sales and use
 26 taxes, the county commission shall adopt an order terminating the transportation sales and use
 27 taxes imposed pursuant to this article on the date specified. However, the termination may not
 28 extinguish any person's liability for payment of transportation sales and use taxes that arose prior
 29 to termination of the taxes regardless of whether the taxes were assessed or not assessed prior
 30 to the termination date, and as to those taxes, the rights and duties of the taxpayer and of the
 31 State of West Virginia shall be fully and completely preserved.

32 (f) Prohibition on termination or rate reduction. – The county commission may not repeal
 33 the order imposing transportation sales and use taxes pursuant to this article, or reduce the rates
 34 at which the taxes are imposed, so long as any revenue bonds secured by the taxes remain
 35 outstanding, unless payment of the bonds has been secured.

PART III. COMMISSIONER OF HIGHWAYS.

§7-27-12. Application to Commissioner of Highways for approval of road construction project plans.

1 The Commissioner of Highways, within sixty days after receipt of the county commission's
 2 proposed road construction project plan, or an amendment to a previously approved project plan,
 3 shall: (1) Approve the plan as submitted, in whole or in part; (2) reject the plan as submitted, in
 4 whole or in part; or (3) return the plan to the county commission for further development or review
 5 in accordance with instructions of the Commissioner of Highways. The decision of the
 6 commissioner is final and is not subject to judicial review.

§7-27-13. Contents of application and review.

1 (a) Each application submitted pursuant to this article shall include:

2 (1) A true copy of the county's proposed road construction project plan, or proposed
3 amendment to a project plan previously approved by the Commissioner of Highways, that is
4 adopted, after the public hearing, by resolution of the county commission;

5 (2) A true copy of the resolution adopted by the county commission approving submission
6 of the adopted road construction project plan, or the proposed amendment to a project plan
7 previously approved by the Commissioner of Highways, to the Commissioner of Highways for
8 approval;

9 (3) A true copy of the notice of public hearing or hearings on the county's proposed road
10 construction plan, or proposed amendment to a previously adopted project plan, and a true copy
11 of the proposed plan, or the proposed amendment to an existing project plan that was the subject
12 of the public hearing;

13 (4) An affidavit signed by the president of the county commission confirming publication
14 of the notice of public hearing;

15 (5) A true copy of the transcript of the public hearing or hearings, or a true copy of the
16 digital recording of the public hearing or hearings, including true copies of any written comments
17 received by the commission on the proposed road construction project plan, or the proposed
18 amendment to an existing project plan;

19 (6) A statement generally describing each project included in the county's road
20 construction project plan, or the proposed amendment to an existing project plan, and identifying:

21 (A) Type of project, as:

22 (i) Road project;

23 (ii) Bridge project; or

24 (iii) Road and bridge project.

25 (B) Location of the project.

26 (C) Length of the project (in miles or feet).

27 (D) Scope of the work.

- 28 (E) Classification of the project as:
- 29 (i) Preservation project;
- 30 (ii) Modernization projects; or
- 31 (iii) Expansion project.
- 32 (F) Estimated cost of the project.
- 33 (G) Method of financing the project.
- 34 (H) Time line for completion of the project.
- 35 (7) A map of the county showing the geographic location of each road construction project
- 36 included in the county's road construction project plan;
- 37 (8) When the road construction project is located, in whole or in part, within the corporate
- 38 limits of any municipality, a true copy of the resolution adopted by the governing body of the
- 39 municipality consenting to the road construction project;
- 40 (9) Identification of any businesses or residents that the county commission anticipates
- 41 will be displaced or leave because of the road construction project;
- 42 (10) A good faith estimate of the annual net county transportation sales and use tax
- 43 collections to be deposited in the county's sub-account in the County Road Improvement Account
- 44 in the State Road Fund that will be available to finance the project, in whole or in part; and
- 45 (11) Any additional information the Commissioner of Highways may reasonably require to
- 46 analyze a proposed road construction project.
- 47 (b) Review of applications. – The Commissioner of Highways shall review all proposed
- 48 road construction project plans for conformance to statutory and regulatory requirements, the
- 49 reasonableness of the project's budget and timetable for completion using the following criteria:
- 50 (1) The quality of the proposed road construction project and how it addresses
- 51 transportation problems in the area in which the road construction project will be located;
- 52 (2) Whether there is credible evidence that unless county transportation sales and use tax
- 53 revenues are used to finance the road construction project, in whole or in part, the project would
- 54 not otherwise be feasible in the time line proposed by the county commission;

55 (3) Whether the county's transportation sales and use tax revenues will leverage or be the
56 catalyst for the effective use of state or federal funding that is available;

57 (4) Whether there is substantial and credible evidence that the proposed road construction
58 project is likely to be started and completed in a timely fashion;

59 (5) Whether the proposed project will, directly or indirectly, improve transportation in the
60 area where the road construction project will occur benefitting county residents and facilitating
61 commercial business development and expansion in the county;

62 (6) Whether the proposed road construction project will, directly or indirectly, assist in the
63 creation of additional long-term employment opportunities in the area and the quality of jobs
64 created to include, but not be limited to, wages and benefits;

65 (7) Whether the proposed road construction project will fulfill a pressing transportation
66 need for the county, or part of the county, in which the road construction project would be located;

67 (8) Whether the county commission has a strategy for road construction in the county and
68 whether the proposed road construction project is consistent with that strategy;

69 (9) Whether the road construction project is consistent with the goals of this article; and

70 (10) Whether the road construction project is economically and fiscally sound using
71 recognized business standards of finance and accounting.

72 (c) Additional criteria. – The Commissioner of Highways may establish by legislative rule
73 additional criteria for use when evaluating applications and approving or denying the application,
74 in whole or in part.

75 (d) Certification of road construction project. – When the Commissioner of Highways
76 approves a county's road construction project application, in whole or in part, the commissioner
77 shall issue to the county commission a written certificate evidencing approval of each approved
78 project.

79 (e) Rules. – The Commissioner of Highways may propose rules for legislative approval in
80 accordance with article three, chapter twenty-nine-a of this code to implement the county road

81 construction project application approval process and to further describe the criteria and
 82 procedures it has established in connection therewith.

§7-27-14. Creation of County Road Improvement Account in State Road Fund.

1 (a) Account created. – There is hereby created in the State Road Fund a Special Revenue
 2 Revolving Fund account known as the “County Road Improvement Account” which is an
 3 interest-bearing account that shall be invested in the manner described in section nine-c, article
 4 six, chapter twelve of this code, with the interest income a proper credit to the account.

5 (b) County subaccount. – A separate and segregated subaccount within the account shall
 6 be established for each county that imposes a county transportation sales tax and a county
 7 transportation use tax pursuant to this article.

8 (c) Additional funds. – In addition to the county transportation sales and use taxes levied
 9 and collected as provided in this article, funds paid into the account for the credit of any
 10 subaccount may also be derived from the following sources:

11 (1) All interest or return on the investment accruing to the subaccount;

12 (2) Any gifts, grants, bequests, transfers, appropriations or donations which are received
 13 from any governmental entity or unit or any person, firm, foundation or corporation; and

14 (3) Any appropriations by the Legislature which are made for this purpose.

15 (d) Expenditures from account. – The Commissioner of Highways may withdraw funds
 16 from a county’s subaccount only in accordance with one or more intergovernmental agreements
 17 or contracts executed by the county commission of that county.

**§7-27-15. Cash basis projects; issuance of road construction special revenue bonds by
 Commissioner of Highways.**

1 (a) Cash basis projects. – Each county commission that has a subaccount in the County
 2 Road Improvement Account established pursuant to this article may, in its discretion and pursuant
 3 to an intergovernmental written agreement with the county commission, authorize the

4 Commissioner of Highways to use the moneys in its subaccount to finance the costs of road
 5 construction projects in the county on a cash basis.

6 (b) *Special revenue bonds.* – Additionally, the county commission may by
 7 intergovernmental written agreement authorize the Commissioner of Highways to issue, in the
 8 manner prescribed by this article, special revenue bonds secured by county transportation sales
 9 and use taxes imposed pursuant to this article to finance or refinance all or part of a road
 10 construction project in the county and pledge all or any part of the county transportation sales and
 11 use taxes for the payment of the principal of and interest on such bonds and the reserves therefor.

**§7-27-16. Commissioner’s authority over road construction projects accepted into the
 state road system; use of state road funds.**

1 (a) Notwithstanding anything in this article to the contrary, the Commissioner of Highways
 2 has final approval of any road construction project. However, no state road funds may be used,
 3 singly or together with funds from any other source, for any purpose or in any manner contrary to
 4 or prohibited by the Constitution and laws of this state or the federal government or where such
 5 use, in the sole discretion of the commissioner, would jeopardize receipt of federal funds.

6 (b) All road construction projects that are accepted as part of the state road system, and
 7 all real property interests and appurtenances, are under the exclusive jurisdiction and control of
 8 the Commissioner of Highways, who may exercise the same rights and authority as he or she has
 9 over other transportation facilities in the state road system.

§7-27-17. Qualifying a transportation project as a public improvement.

1 All road construction projects authorized under this article are public improvements subject
 2 to article one-c, chapter twenty-one of this code, and either article twenty-two, chapter five of this
 3 code or article two-d, chapter seventeen of this code.

§7-27-18. Reports by Commissioner of Highways.

1 Each year, the Commissioner of Highways shall prepare a report giving the status of each
 2 road construction project being constructed pursuant to this article and file it by October 1 with

3 the Governor, the Joint Committee on Government and Finance of the Legislature and with each
4 county commission with which the Commissioner of Highways has an intergovernmental
5 agreement executed pursuant to this article. The report shall include the following information:

6 (1) The identification, by county, of each road construction project for which an
7 intergovernmental agreement has been executed pursuant to this article, and the status of the
8 road construction project as of June 30 preceding the due date of the report;

9 (2) The estimated cost of each road construction project included in the report;

10 (3) The source or sources of funding for each road construction project included in the
11 report;

12 (4) If revenue bonds have been issued by the Commissioner of Highways, the amount of
13 the bonds issued that are outstanding as of June 30 preceding the due date of the report for each
14 project included in the report;

15 (5) The balance as of June 30 preceding the due date of the report of each county's
16 subaccount in the County Improvement Account in the State Road Fund;

17 (6) The amount of transportation sales and use taxes deposited into each county's
18 subaccount in the County Road Improvement Account in the State Road Fund during the fiscal
19 year ending June 30 preceding the due date of the commissioner's report; and

20 (7) The amount the Commissioner of Highways withdrew from each county's subaccount
21 in the County Road Improvement Account in the State Road Fund during the fiscal year ending
22 June 30 preceding the due date of the report to pay debt service on revenue bonds issued
23 pursuant to this article or to construct projects financed on a pay-as-you-go basis.

PART IV. COUNTY ROAD CONSTRUCTION SPECIAL REVENUE BONDS.

§7-27-19. Issuance of county road construction special revenue bonds.

1 Special revenue bonds may be issued by the Division of Highways pursuant to an
2 intergovernmental written agreement with the county commission to finance or refinance, in whole
3 or in part, road construction projects in an aggregate principal amount not exceeding the amount

4 which the county commission(s) and the Commissioner of Highways mutually agree can be paid
5 as to both principal and interest and reasonable margins for a reserve, if any, therefor from county
6 transportation sales and use tax collections. In the discretion of the Commissioner of Highways,
7 special revenue bonds issued pursuant to this article may be issued for road construction projects
8 in two or more counties.

9 (1) The Commissioner of Highways issuing road construction special revenue bonds
10 pursuant to this article shall establish a fund to deposit county transportation sales and use tax
11 collections to pay debt service on the bonds.

12 (2) The Commissioner of Highways shall thereafter transfer from the county's subaccount
13 all transportation sales and use tax revenues pledged to the payment of principal and interest of
14 the road construction special revenue bonds into the fund established under subdivision (1) of
15 this section.

16 (3) The road construction special revenue bonds shall be authorized to be issued by the
17 Commissioner of Highways pursuant to this article, and shall be secured, shall bear such date
18 and shall mature at such time, not exceeding thirty years from the date of issue, shall bear interest
19 at such rate or rates, including variable rates, be in such denominations, be in such form, carry
20 such registration privileges, be payable in such medium of payment and at such place or places
21 and such time or times and be subject to such terms of redemption as the Commissioner of
22 Highways may authorize. Road construction special revenue bonds may be sold by the Division
23 of Highways, at public or private sale, at or not less than the price the Commissioner of Highways
24 determines. The road construction special revenue bonds shall be executed by manual or
25 facsimile signature of the Commissioner of Highways. In case any Commissioner of Highways
26 whose signature, or a facsimile of whose signature, appears on any bond ceases to be the
27 Commission of Highways before delivery of those bonds, the signature or facsimile is
28 nevertheless sufficient for all purposes the same as if he or she had remained in office until the
29 delivery.

§7-27-20. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues and funds.

1 For bonds issued pursuant to this article, any bonds, including refunding bonds issued by
2 the commissioner, may be secured by a trust agreement between the commissioner and a
3 corporate trustee, which trustee may be any bank or trust company within or without the state.
4 Any such trust agreement may contain binding covenants with the holders of the bonds as to any
5 matter or provisions as are considered necessary or advisable to the commissioner to enhance
6 the marketability and security of the bonds and may also contain such other provisions with
7 respect thereto as the commissioner may authorize and approve. Any trust agreement may
8 contain a pledge or assignment of revenues to be received in connection with the financing.

§7-27-21. Refunding bonds.

1 Any bonds issued by the Division of Highways pursuant to the provisions of this article or
2 any other provision of this code and at any time outstanding may at any time and from time to
3 time be refunded by the Division of Highways by the issuance of its refunding bonds in such
4 amount as it may consider necessary to refund the principal of the bonds so to be refunded,
5 together with any unpaid interest thereon, to provide additional funds to approved project costs
6 and to pay any premiums and commissions necessary to be paid in connection therewith.
7 Refunding may be effected by whether the bonds to be refunded have then matured or thereafter
8 mature, either by sale of the refunding bonds and the application of the proceeds thereof for the
9 redemption of the bonds to be refunded thereby or by exchange of the refunding bonds for the
10 bonds to be refunded thereby. Refunding bonds shall be issued in conformance with the
11 provisions of this article related to issuance of bonds.

§7-27-22. Obligations of Commissioner of Highways undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.

1 (a) Bonds, including refunding bonds, issued under this article and any other obligations
2 undertaken by the Division of Highways pursuant to this article, do not constitute a debt or a

3 pledge of the faith and credit or taxing power of this state or of any county, municipality or any
4 other political subdivision of this state, and the holders and owners thereof have no right to have
5 taxes levied by the Legislature or the taxing authority of any county, municipality or any other
6 political subdivision of this state for the payment of the principal thereof or interest thereon, but
7 the bonds and other obligations are payable solely from the revenues and funds pledged for their
8 payment as authorized by this article unless the bonds are refunded by refunding bonds issued
9 under the authority of this article, which bonds or refunding bonds shall be payable solely from
10 revenues and funds pledged for their payment as authorized by this article.

11 (b) All bonds, and all documents evidencing any other obligation, shall contain on the face
12 thereof a statement to the effect that the bonds or other obligation as to both principal and interest
13 are not debts of the state or any county, municipality or political subdivision thereof, but are
14 payable solely from revenues and funds pledged for their payment as authorized by this article.

§7-27-23. Negotiability of bonds issued pursuant to this article.

1 Whether or not the bonds issued pursuant to this article are of the form or character as to
2 be negotiable instruments under the Uniform Commercial Code, the bonds are negotiable
3 instruments within the meaning of and for all the purposes of the Uniform Commercial Code,
4 subject only to the provisions of the bonds for registration.

§7-27-24. Exemption from taxation.

1 All bonds issued by the Commissioner of Highways pursuant to this article, and all interest
2 and income thereon, are exempt from all taxation by this state and any county, municipality,
3 political subdivision or agency thereof, except inheritance taxes.

§7-27-25. Personal liability; persons executing bonds issued pursuant to this article.

1 Neither the Commissioner of Highways, nor any officer or employee of the Division of
2 Highways or the Department of Transportation, or any person executing the bonds issued
3 pursuant to the provisions of this article, are liable personally on the bonds or subject to any
4 personal liability or accountability by reason of the issuance thereof.

§7-27-26. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to this article.

1 The provisions of this article relating to the issuance of bonds shall be construed as
2 granting cumulative authority for the exercise of the various powers herein conferred, and neither
3 the powers nor any bonds issued hereunder are affected or limited by any other statutory or
4 charter provision now or hereafter in force, other than as may be provided in this article, it being
5 the purpose and intention of this article to create full, separate and complete additional powers.
6 The various powers conferred herein may be exercised independently and notwithstanding that
7 no bonds are issued hereunder.

PART V. TRANSPORTATION SALES AND USE TAXES.

§7-27-27. Criteria and requirements necessary to impose county transportation sales and use taxes.

1 As a prerequisite to imposing county transportation sales and use taxes, the county
2 commission shall have entered into one or more intergovernmental agreements with the
3 Commissioner of Highways pursuant to which the county commission agrees to finance one or
4 more road construction projects in the county, in whole or in part, using collections of the county's
5 transportation sales and use taxes deposited in the county's subaccount in the County Road
6 Improvement Account in the State Road Fund.

§7-27-28. Counties authorized to impose transportation sales and use taxes.

1 (a) In addition to all other powers and duties now conferred by law upon county
2 commissions, county commissions, may, after first satisfying the requirements of the preceding
3 section, adopt an order duly entered of record imposing countywide transportation sales and use
4 taxes as provided in this article.

5 (b) Rate of tax. – The rate of the county transportation sales tax and the rate of the county
6 transportation use tax shall be identical and may not exceed one percent of the purchase price

7 subject to tax under article fifteen, chapter eleven of this code, or one percent of the value upon
8 which the county use tax is imposed.

9 (c) Sales tax base. – In general, the tax base of county transportation sales tax imposed
10 pursuant to this article shall be identical to the consumers sales and service tax base of this state,
11 except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may
12 not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and
13 (3) the county sales tax may not apply as provided in subsection (e) of this section.

14 (d) Use tax base. – In general, the tax base of a county transportation use tax imposed
15 pursuant to this article shall be identical to the use tax base of this state unless otherwise
16 prohibited by federal law and except as provided in subsection (e) of this section. When the tax
17 imposed by article fifteen, chapter eleven of this code was paid to the vendor at the time of
18 purchase but the county's sales tax was not paid because the vendor is located in this state but
19 not in the county imposing use tax pursuant to this article, the purchaser who uses the tangible
20 personal property, custom software or results of the taxable service in the county shall owe the
21 use tax imposed by that county unless taxation is otherwise prohibited by federal law or prohibited
22 by subsection (e) of this section.

23 (e) Exceptions. – County sales and use taxes may not apply to:

24 (1) Sales and uses of motor vehicles upon which the tax imposed by section three-c, article
25 fifteen, chapter eleven of this code was paid or is payable;

26 (2) Sales and uses of motor fuel upon which or with respect to which the taxes imposed
27 by articles fourteen-a and fourteen-c, chapter eleven of this code was paid or is payable;

28 (3) Any sale of tangible personal property or custom software or the furnishing of a service
29 that is exempt from the tax imposed by article fifteen, chapter eleven of this code;

30 (4) Any use of tangible personal property, custom software or the results of a taxable
31 service that is exempt from the tax imposed by article fifteen-a, chapter eleven of this code, except
32 that this exception may not apply to any use within the county when the state consumers sales

33 and service tax imposed by article fifteen, chapter eleven of this code, was paid to the seller at
34 the time of purchase but the county's transportation sales tax was not paid to the seller; and

35 (5) Any sale or use of tangible personal property, custom software, taxable service that
36 the county is prohibited from taxing by federal law or the laws of this state.

37 (f) Whenever tangible personal property, custom software, or a taxable service is
38 purchased in a county of this state that does not impose county transportation sales and use taxes
39 pursuant to this article and the tangible personal property, custom software or results of a taxable
40 service are used in a county that does impose county transportation sales and use taxes pursuant
41 to this article:

42 (1) A vendor who delivers the tangible personal property, custom software or results of a
43 taxable service to a purchaser, or the purchaser's donee, located in a county that imposes county
44 transportation sales and use taxes pursuant to this article, shall collect, add the tax to the
45 purchase price and collect the tax from the purchaser; and

46 (2) A person using tangible personal property or custom software in a county of this state
47 that imposes sales and use taxes pursuant to this article, shall remit the county's use tax to the
48 Tax Commissioner unless the amount of sales and use taxes imposed by the county in which the
49 tangible personal property, custom software or taxable service was purchased were lawfully paid.

§7-27-29. Notification of Tax Commissioner, Auditor and Treasurer.

1 (a) Any county that imposes a transportation sales tax and a transportation use tax
2 pursuant to this article, or changes the rate of the taxes, shall notify the Tax Commissioner at
3 least sixty days before the effective date of the imposition of the taxes or the change in the rate
4 of taxation and provide the commissioner with a certified copy of the order of the county
5 commission imposing the taxes or changing the rates of taxation.

6 (b) A copy of the notice shall at the same time be furnished to the State Auditor and the
7 State Treasurer.

§7-27-30. State level administration of county transportation sales and use taxes required; fee for services.

1 (a) State administration required. – Any county commission that imposes a transportation
 2 sales tax pursuant to this article and a county transportation use tax may not administer, collect
 3 or enforce those taxes. Authority to administer, collect and enforce county transportation sales
 4 and use taxes is vested solely in the Tax Commissioner as required by article fifteen-b, chapter
 5 eleven of this code.

6 (b) Fee for services. – The Tax Commissioner may retain from the net amount of sales
 7 and use taxes collected for a county pursuant to this article a fee not to exceed the lesser of the
 8 cost of the service provided or one percent of the net amount of the taxes imposed pursuant to
 9 this article that are collected by the Tax Commissioner during any fiscal year, notwithstanding any
 10 provision of this code or rule to the contrary.

11 (c) Deposit of fees in special revenue account. – The fees retained by the Tax
 12 Commissioner pursuant to subsection (b) of this section shall be deposited in the State Treasury
 13 in a special revenue revolving fund account known as the Tax Department Sales and Use Tax
 14 Operations Fund.

§7-27-31. County transportation sales tax collected from purchaser.

1 A vendor selling tangible personal property or custom software or furnishing a service in
 2 a county that imposes a transportation sales tax pursuant to this article shall for the privilege of
 3 doing business in the county collect the county's transportation sales tax from the purchaser at
 4 the same time and in the same manner that the tax imposed by article fifteen, chapter eleven of
 5 this code, is collected from the customer. All sales of tangible personal property and custom
 6 software made in the county and all services furnished in the county are presumed to be subject
 7 to the county's transportation sales tax unless an exemption or exception applies.

§7-27-32. Payment of county transportation use taxes.

1 A county transportation use tax imposed pursuant to this article shall be paid to the Tax
 2 Commissioner by the user of tangible personal property or custom software or the results of a
 3 taxable service in the county that imposes the transportation use tax, unless the county's use tax
 4 is collected by a retailer located outside the county that is a retailer engaging in business in the
 5 county as defined in this article, or the retailer is an out-of-state retailer who is required to collect
 6 West Virginia state and local use taxes.

§7-27-33. County transportation sales and use taxes are in addition to other taxes.

1 County transportation sales and use taxes imposed pursuant to this article shall be
 2 collected and paid in addition to:

3 (1) The state consumers sales and service tax imposed by article fifteen, chapter eleven
 4 of this code;

5 (2) The state use tax imposed by article fifteen-a, chapter eleven of this code;

6 (3) Any hotel occupancy tax imposed pursuant to section one, article eighteen of this
 7 chapter;

8 (4) Any tax imposed pursuant to article twenty-two of this chapter;

9 (5) Any municipal sales or use tax imposed pursuant to section five-a, article one, chapter
 10 eight of this code;

11 (6) Any tax imposed pursuant to sections six and seven, article thirteen, chapter eight of
 12 this code;

13 (7) Any tax imposed by article thirty-eight, chapter eight of this code; and

14 (8) The tax imposed by section twenty-one, article three-a, chapter sixty of this code.

§7-27-34. Credit for sales tax paid to another county.

1 (a) Credit against county use tax. – A person is entitled to a credit against the use tax
 2 imposed by a county commission pursuant to this article on the use of tangible personal property,
 3 custom software or the results of a taxable service in the county equal to the amount, if any, of

4 sales tax lawfully paid to another county for the acquisition of that tangible personal property,
 5 custom software or taxable service. However, the amount of credit allowed may not exceed the
 6 amount of use tax imposed on the use of the property or service in the county of use and no credit
 7 may be allowed for payment of county special district excise taxes imposed pursuant to article
 8 twenty-two of this chapter.

9 (b) *Definitions.* – For purposes of this section:

10 (1) “County” means a county in this state or a comparable unit of local government in
 11 another state;

12 (2) “Sales tax” includes a sales tax, or a compensating use tax, lawfully imposed on the
 13 sale or use of tangible personal property, custom software or a taxable service by the county, as
 14 appropriate, in which the sale or first use occurred; and

15 (3) “State” includes the fifty states of the United States and the District of Columbia but
 16 does not include any of the several territories organized by Congress.

17 (c) No credit is allowed under this section for payment of any sales or use taxes imposed
 18 by this state or by any other state.

§7-27-35. Sourcing rules for county transportation sales and use taxes.

1 Sales, purchases and uses of tangible personal property, custom software and taxable
 2 services shall be sourced for purposes of imposition and payment of county transportation sales
 3 and use taxes imposed pursuant to this article in accordance with the sourcing rules set forth in
 4 article fifteen-b, chapter eleven of this code applicable to the taxes imposed by articles fifteen and
 5 fifteen-a, chapter eleven of this code.

§7-27-36. Application of state consumers sales and service tax provisions.

1 (a) *Application of state sales tax.* – The provision of article fifteen, chapter eleven of this
 2 code, and any subsequent amendments to that article and the administrative rules of the Tax
 3 Commissioner relating to article fifteen of chapter eleven shall apply to a county transportation

4 sales tax imposed pursuant to this article to the extent that article and the rules are applicable to
 5 the tax imposed by the county.

6 (b) Application of state use tax law. – The provisions of article fifteen-a, chapter eleven of
 7 this code, and any subsequent amendments to that article and the rules of the Tax Commissioner
 8 relating to article fifteen-a of chapter eleven shall apply to a county transportation use tax imposed
 9 pursuant to this article to the extent the rules and laws are applicable.

10 (c) Definitions incorporated. – Any term used in this article or in an order adopted by a
 11 county commission pursuant to this article imposing county transportation sales and use taxes
 12 that is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and used in
 13 those articles in a similar context, shall have the same meaning when used in this article or in an
 14 order entered by the county commission pursuant to this article imposing transportation sales and
 15 use taxes, unless the context in which the term is used clearly indicates that a different result is
 16 intended by the Legislature.

§7-27-37. Application of West Virginia Tax Procedure and Administration Act.

1 Every provision of the West Virginia Tax Procedure and Administration Act set forth in
 2 article ten, chapter eleven of this code, and as amended from time to time by the Legislature,
 3 applies to the taxes imposed pursuant to this article, except as otherwise expressly provided in
 4 this article, with like effect as if that act were applicable only to the taxes imposed by this article
 5 and were set forth in extensor in this article or the order entered by the county commission
 6 imposing the taxes pursuant to this article.

§7-27-38. Application of West Virginia Tax Crimes and Penalties Act.

1 Every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine,
 2 chapter eleven of this code, and as amended from time to time by the Legislature, applies to the
 3 taxes imposed pursuant to this article with like effect as if that act were applicable only to the
 4 taxes imposed pursuant to this article and were set forth in extensor in this article or the order
 5 entered by the county commission imposing the taxes pursuant to this article.

§7-27-39. Automatic updating.

1 Any amendments to articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of this
 2 code shall automatically apply to transportation sales tax and transportation use tax imposed by
 3 county commissions pursuant to this article, to the extent any amendment is applicable to the
 4 taxes imposed by articles fifteen and fifteen-a, chapter eleven of this code.

§7-27-40. Local rate and boundary changes.

1 (a) General. – New county transportation sales and use taxes and any change in the rate
 2 of existing transportation sales and use taxes shall first apply and be collected and paid only on
 3 the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner
 4 notifies sellers of the imposition of the county taxes, or a change in the rate of those taxes, except
 5 as provided in subsection (b) of this section.

6 (b) Printed catalogs. – County transportation sales and use taxes and any change in the
 7 rate of taxation shall first apply to purchases from printed catalogs where the purchaser computed
 8 the tax based upon the local tax rate published in the catalog only on and after the first day of a
 9 calendar quarter that begins after the Tax Commissioner provides sellers at least one hundred
 10 twenty days' notice of imposition of the tax or a change in the rate of taxation.

11 (c) County boundary changes. – A county boundary change shall first apply for purposes
 12 of computation of a county transportation sales and use taxes on the first day of a calendar quarter
 13 that begins at least sixty days after the Tax Commissioner notifies sellers of the boundary change.

§7-27-41. Deposit of county transportation sales and use taxes and payment to Division of Highways.

1 (a) All county sales and use taxes collected by the Tax Commissioner under this article
 2 shall be collected and paid into the State Road Fund to the credit of each county commission's
 3 subaccount in the "County Road Improvement Account" established in the State Road Fund
 4 pursuant to this article.

5 (b) The credit shall be made to the subaccount of the county commission of the county in
6 which the taxable sales were made and services rendered or taxable uses occurred as shown by
7 the records of the Tax Commissioner and certified by the Tax Commissioner to the State
8 Treasurer, namely, the location of each place of business of every vendor collecting and paying
9 sales and use taxes to the Tax Commissioner without regard to the place of possible use by the
10 purchaser and by every person remitting county transportation use tax to the Tax Commissioner
11 or paying the county's use tax to the Tax Commissioner.

12 (c) As soon as practicable after the transportation sales and use taxes for a particular
13 county have been paid into the State Road Fund in any month for the preceding reporting period,
14 the Commissioner of Highways may issue a requisition to the Auditor requesting issuance of a
15 state warrant for the funds of the county in its subaccount, as provided in the intergovernmental
16 agreement or agreements executed by the Commissioner of Highways and the county
17 commission.

18 (1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State
19 Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the
20 subaccount.

21 (2) If errors are made in any payment, or adjustments are otherwise necessary, whether
22 attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and
23 adjustments made in the payments for the next six months as follows: One sixth of the total
24 adjustment shall be included in the payments for each month for the next six months, to be paid
25 in full during this six months period. In addition, the payment shall include a refund of amounts
26 erroneously not paid to the subaccount of the county commission and not previously remitted to
27 the county's subaccount during the three years preceding the discovery of the error.

28 (3) A correction and adjustment in payments described in this subsection due to the
29 misallocation of funds by the person remitting the tax shall be made within three years of the date
30 of the payment error.

31 (d) Notwithstanding any other provision of this code or a rule to the contrary, the Tax
 32 Commissioner may deduct and retain for the benefit of his or her office for expenditure pursuant
 33 to appropriation of the Legislature from each payment into the "County Road Improvement
 34 Account" in the State Road Fund, as provided in subsection (c) of this section, the lesser of the
 35 cost of the service provided or one percent of the net amount of the taxes imposed as a
 36 commission to compensate his or her office for the administration, collection and enforcement of
 37 county sales and use taxes.

§7-27-42. Effective date of county transportation sales and use taxes.

1 (a) Notwithstanding the effective date of an order of the county commission imposing
 2 transportation sales and use taxes, or changing the rate of tax, the tax or a rate change may not
 3 become operational and no vendor may be required to collect the tax and no purchaser or user
 4 may be required to pay the tax until the first day of a calendar quarter that begins at least sixty
 5 days after the Tax Commissioner complies with the requirements of section thirty-five, article
 6 fifteen-b, chapter eleven of this code.

7 (b) The Tax Commissioner shall issue his or her notice to vendors and other persons
 8 required to collect sales and use taxes within thirty days after receiving from the county:

9 (1) A certified copy of the order of the county commission imposing transportation sales
 10 and use taxes, or changing the rate of tax, notwithstanding any other provision of this code or rule
 11 to the contrary;

12 (2) The rate and boundary database of the county identifying all of the five digit zip codes
 13 and nine-digit zip codes located in the county in conformity with the requirements for West Virginia
 14 to maintain full membership in the Streamlined Sales Tax Governing Board pursuant to article
 15 fifteen-b, chapter eleven of this code; and

16 (3) Such other information as the Tax Commissioner may reasonably require.

**§7-27-43. Cash basis projects; termination of county transportation sales and use taxes;
 excess funds.**

1 (a) When special revenue bonds have been issued as provided in this article and the
2 amount of county transportation sales and use taxes imposed pursuant to this article and
3 collected, less costs of administration, collection and enforcement, exceeds the amount needed
4 to pay project costs and annual debt service, including the funding of required debt service and
5 maintenance reserves, if any, the additional amount remaining in the county's subaccount in the
6 County Road Improvement Account in the State Road Fund shall be used to retire outstanding
7 revenue bonds before their maturity date in accordance with the terms of such bonds.

8 (b) Termination of transportation sales and use taxes. – Once the special revenue bonds
9 issued as provided in this article are no longer outstanding or have been defeased, and no
10 additional road construction projects have been requested and approved by the Commissioner of
11 Highways, the county transportation sales and use taxes shall be discontinued by order adopted
12 by the county commission as provided in this article. Termination of the transportation sales and
13 use taxes as provided in this section may not bar or otherwise prevent the Tax Commissioner
14 from collecting county transportation sales and use taxes that accrued before the termination date
15 and the rights of the state and the taxpayers as to those taxes shall be preserved.

16 (c) Excess funds. – After all intergovernmental agreements with the Commissioner of
17 Highways have ended and all debt service on special revenue bonds issued to finance, in whole
18 or in part, the road construction projects has been paid or provided for, and transportation sales
19 and use taxes imposed by the county have terminated, the Commissioner of Highways shall
20 forward the unencumbered balance of moneys remaining in the county's subaccount in the
21 County Road Improvement Account in the State Road Fund to the county commission of that
22 county for deposit in the county's general fund.

PART VI. MISCELLANEOUS.

§7-27-44. Powers supplemental.

1 (a) County commissions. – The powers conferred by this article are in addition and
2 supplemental to the powers conferred upon county commissions by the Legislature elsewhere in
3 this chapter.

4 (b) Commissioner of Highways. – The powers conferred by this article are in addition and
5 supplemental to the powers conferred upon the Commissioner of Highways, the Division of
6 Highways, and the Department of Transportation by the Legislature elsewhere in this code.

§7-27-45. Public officials exempt from personal liability.

1 No member of a county commission or other county officer may be personally liable on
2 any contract or obligation executed pursuant to the authority contained in this article. Nor may
3 these contracts or obligations or the issuance of revenue bonds by the Commissioner of Highways
4 secured by transportation sales and use taxes imposed by county commissions under this article
5 be considered as misfeasance in office.

§7-27-46. Severability.

1 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
2 article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not
3 affect the validity of the remaining portions of this article or any part thereof.