

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 210

BY SENATORS BOSO, RUCKER AND UNGER

[Originating in the Committee on Transportation and
Infrastructure; reported on February 22, 2017]

1 A BILL to amend and reenact §7-20-1, §7-20-2, §7-20-3, §7-20-6, §7-20-7, §7-20-7a, §7-20-14,
2 §7-20-15, §7-20-16, §7-20-23 and §7-20-24 of the Code of West Virginia, 1931, as
3 amended; and to amend said code by adding thereto twenty-seven new sections,
4 designated §7-20-25, §7-20-26, §7-20-27, §7-20-28, §7-20-29, §7-20-30, §7-20-31, §7-
5 20-32, §7-20-33, §7-20-34, §7-20-35, §7-20-36, §7-20-37, §7-20-38, §7-20-39, §7-20-40,
6 §7-20-41, §7-20-42, §7-20-43, §7-20-44, §7-20-45, §7-20-46, §7-20-47, §7-20-48, §7-20-
7 49, §7-20-50 and §7-20-51; and to amend said code by adding thereto a new section,
8 designated §31-15-16d, all relating to Local Powers Act; renaming short title the County
9 Local Powers Act; amending its purpose and legislative findings; amending certain
10 definitions and adding definitions; amending criteria and requirements to implement and
11 collect certain fees; making technical corrections; amending authorization for county
12 commissions related to imposition of impact fees, services fees and other taxes; providing
13 for county commission review and permissive approval of impact fees; amending use of
14 proceeds from sale of bonds; adding payment sources for bonds; allowing the reallocation
15 of certain ad valorem property taxes after ratification of constitutional amendment and
16 procedures and requirements related to reallocation of ad valorem property taxes;
17 specifying effective date; providing requirements and procedures concerning creation and
18 finalization of county road construction project plans and amendments thereto; specifying
19 public hearing and notice requirements and opportunity for public comment; requiring
20 consent; permitting joint road construction projects; setting forth duties, authorities and
21 jurisdiction of Commissioner of Highways; authorizing intergovernmental agreements and
22 setting forth requirements related thereto; providing for the termination of road
23 construction projects plan; providing for application for approval of road construction
24 project plans and application content; providing for certification of road construction
25 project; providing rule-making authority; providing for acceptance into state road system;
26 qualifying road construction projects as public improvements; providing for reporting by

27 Commissioner of Highways; creating special revenue revolving fund and for county
28 subaccounts; providing for funding and expenditures from account; authorizing West
29 Virginia Economic Development Authority to issue revenue bonds and refunding bonds;
30 permitting cash-basis projects; setting forth requirements concerning issuance, selling,
31 execution and use of bonds; permitting trust agreements; specifying that bonds and other
32 obligations undertaken by the West Virginia Economic Development Authority do not
33 constitute a debt or a pledge of the faith and credit or taxing power of this state or of any
34 county, municipality or any other political subdivision; specifying that bonds are negotiable
35 instruments; providing exemption from taxation; waiving and exempting personal liability;
36 providing that authority for exercise of powers are cumulative and neither powers nor
37 bonds are limited; permitting cash-basis projects; providing for termination of special
38 allocation of property taxes; providing for excess fund deposit; specifying that powers are
39 supplemental; providing for severability; and providing authority and requirements related
40 to West Virginia Economic Development Authority, including authority to issue bonds,
41 limitations, payments, certification and return of unused funds.

Be it enacted by the Legislature of West Virginia:

1 That §7-20-1, §7-20-2, §7-20-3, §7-20-6, §7-20-7, §7-20-7a, §7-20-14, §7-20-15, §7-20-
2 16, §7-20-23 and §7-20-24 of the Code of West Virginia, 1931, as amended, be amended and
3 reenacted; and that said code be amended by adding thereto twenty-seven new sections,
4 designated §7-20-25, §7-20-26, §7-20-27, §7-20-28, §7-20-29, §7-20-30, §7-20-31, §7-20-32, §7-
5 20-33, §7-20-34, §7-20-35, §7-20-36, §7-20-37, §7-20-38, §7-20-39, §7-20-40, §7-20-41, §7-20-
6 42, §7-20-43, §7-20-44, §7-20-45, §7-20-46, §7-20-47, §7-20-48, §7-20-49, §7-20-50 and §7-20-
7 51; and that said code be amended by adding thereto a new section, designated §31-15-16d, all
8 to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

PART I. IMPACT FEES AND SERVICE FEES.

§7-20-1. Short title.

1 This article shall be known as the County Local Powers Act.

§7-20-2. Purpose and findings.

1 (a) It is the purpose of this article to provide for the fair distribution of costs for county
2 development by authorizing the assessment and collection of fees to offset the cost of
3 commercial, industrial and residential development within affected counties.

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

5 (1) The residents, taxpayers and users of county facilities and services, in affected
6 counties, have contributed significant funds in the form of taxes and user charges toward the cost
7 of existing county facilities and services, which represent a substantial and incalculable
8 investment;

9 (2) Affected counties in West Virginia are experiencing an increased demand for
10 development which is causing strain on tax revenues and user charges at existing levels and
11 impairing the ability of taxpayers, residents and users to bear the cost of increased demand for
12 county facilities and services. In some instances, county borrowing has been required to meet the
13 demand;

14 (3) Equitable considerations require that future residents and users of existing county
15 facilities and services contribute toward the investment already made in those facilities and
16 services;

17 (4) Sound fiscal policy in the efficient administration of county government requires that
18 the imposition of taxes and user charges be commensurate ~~to~~ with the actual yearly cost of county
19 facilities and services;

20 (5) Accumulations of large financial reserves for future capital expenditures unjustly exact
21 unneeded current funds from taxpayers and users; ~~and~~

22 (6) County borrowing unnecessarily increases the cost of government by the amount of
23 debt service and should be avoided unless considered absolutely necessary to meet an existing
24 public need; and

25 (7) County economic development is hampered by the lack of state dollars to fund new
26 roads and bridges and related infrastructure and to fund improvements to existing state roads and
27 bridges and related infrastructure.

§7-20-3. Definitions.

1 For purposes of this article:

2 (a) "Capital improvements" means the following public facilities or assets that are owned,
3 supported or established by, ~~county government~~ or on behalf of, a government entity:

4 (1) Water treatment and distribution facilities;

5 (2) Wastewater treatment and disposal facilities;

6 (3) Sanitary sewers;

7 (4) Stormwater, drainage and flood control facilities;

8 (5) Public primary and secondary school facilities;

9 (6) Public road systems and rights-of-way owned by the West Virginia Department of
10 Transportation or another government entity;

11 (7) Parks and recreational facilities; ~~and~~

12 (8) Police, emergency medical, rescue and fire protection facilities; and

13 (9) Conduit.

14 "Capital improvements", as defined herein, is limited to those improvements that are
15 treated as capitalized expenses according to generally accepted governmental accounting
16 principles, or generally accepted accounting principles in the case of certain county economic
17 development entities, and that have an expected useful life of no less than three years. "Capital

18 improvement” does not include costs associated with the operation, repair, maintenance or full
19 replacement of capital improvements. “Capital improvement” does include reasonable costs for
20 planning, design, engineering, land acquisition and other costs directly associated with the capital
21 improvements described herein.

22 (b) “Conduit” means a man-made conveyance constructed and operated for the purpose
23 of facilitating the provision of any public utility service as defined in chapter twenty-four of this
24 code and any video, telecommunications or information service as defined in 47 U. S. C. §151, et
25 seq.

26 (c) “County economic development entity” means a county economic development
27 authority established pursuant to article twelve of this chapter or if a county does not have a
28 county economic development authority established pursuant to article twelve of this chapter, an
29 entity designated by resolution of the county commission of the county as the lead entity for
30 economic development activities for the purpose of encouraging economic development in the
31 county which entity may be, but is not limited to being, redevelopment authorities created pursuant
32 to article eighteen, chapter sixteen of this code; county economic development corporations; and
33 regional economic development councils, corporations or partnerships.

34 ~~(b)~~ (d) “County services” means the following: (1) Services provided by administration and
35 administrative personnel, law enforcement and its support personnel; (2) street light service; (3)
36 firefighting service; (4) ambulance service; (5) fire hydrant service; (6) roadway maintenance and
37 other services provided by roadway maintenance personnel; (7) public utility systems and
38 services provided by public utility systems personnel, water; and (8) all other direct and indirect
39 county services authorized by this code.

40 ~~(c)~~ (e) “Direct county services” means those public services authorized and provided by
41 various county agencies or departments including, but not limited to, county economic
42 development entities.

43 (f) "Economic development" means any activity by a government entity seeking to improve
44 the economic well-being and quality of life for a community and its citizens by creating or retaining
45 jobs, growing incomes and increasing the tax base.

46 ~~(d) "Indirect county services" means those public services authorized and provided by~~
47 ~~commissioned agents, agencies or departments of the county~~

48 (g) "Governmental entity" means the state and any county, municipality or other
49 governmental unit or political subdivision of the state, public corporation established by the state,
50 or a political subdivision thereof, and county economic development entities.

51 ~~(e)~~ (h) "Growth county" means any county within the state with an averaged population
52 growth rate in excess of one percent per year as determined from the most recent decennial
53 census counts and forecasted, within decennial census count years, by official records of
54 government or generally approved standard statistical estimate procedures: *Provided*, That once
55 "growth county" status is achieved it is permanent in nature and the powers derived hereby are
56 continued. However, beginning July 1, 2017, the term "growth county" means and includes all of
57 the fifty-five counties in this state regardless of their population.

58 (i) "Indirect county services" means those public services authorized and provided by
59 commissioned agents, agencies or departments of the county.

60 ~~(f) "User" means any member of the public who uses or may have occasion to use county~~
61 ~~facilities and services as defined herein~~

62 ~~(g)~~ (j) "Impact fees" means any charge, fee or assessment levied as a condition of the
63 following: (1) Issuance of a subdivision or site plan approval; (2) issuance of a building permit;
64 and (3) approval of a certificate of occupancy, or other development or construction approval
65 when any portion of the revenues collected is intended to fund any portion of the costs of capital
66 improvements for any public facilities or county services not otherwise permitted by law. An impact
67 fee does not include charges for remodeling, rehabilitation or other improvements to an existing

68 structure or rebuilding a damaged structure, provided there is no increase in gross floor area or
69 in the number of dwelling units that result therefrom.

70 ~~(h) “Proportionate share” means the cost of capital improvements that are reasonably~~
71 ~~attributed to new development less any credits or offsets for construction or dedication of land or~~
72 ~~capital improvements, past or future payments made or reasonably anticipated to be made by~~
73 ~~new development in the form of user fees, debt service payments, taxes or other payments toward~~
74 ~~capital improvement costs.~~

75 ~~(i) “Reasonable benefit” means a benefit received from the provision of a capital~~
76 ~~improvement greater than that received by the general public located within the county wherein~~
77 ~~an impact fee is being imposed~~

78 ~~(j) (k) “Plan” means a county, comprehensive, general, master or other land use plan as~~
79 ~~described herein in part I of this article.~~

80 ~~(k) (l) “Program” means the capital improvements program described herein.~~

81 (m) “Proportionate share” means the cost of capital improvements that are reasonably
82 attributed to new development less any credits or offsets for construction or dedication of land or
83 capital improvements, past or future payments made, or reasonably anticipated to be made, by
84 new development in the form of user fees, debt service payments, taxes or other payments toward
85 capital improvement costs.

86 (n) “Reasonable benefit” means a benefit received from the provision of a capital
87 improvement greater than that received by the general public located within the county wherein
88 an impact fee is being imposed.

89 (o) “Related infrastructure” means and includes water distribution facilities, sanitary
90 sewers and stormwater, drainage and flood control facilities: *Provided*, That the Division of
91 Highways is not responsible for financing, constructing, installing or maintaining related
92 infrastructure which may be located on a Division of Highways’ right-of-way.

93 (p) "Road" means a public highway, road, bridge, tunnel or overpass to be used for the
94 transportation of persons or goods that is, or will be upon completion, part of the state road system
95 as defined in article twelve-a of this chapter.

96 (q) "Road project" means any project, including related infrastructure, to acquire, design,
97 construct, expand, renovate, extend, enlarge, increase, equip, improve, maintain or operate a
98 road in this state that is under the jurisdiction of the West Virginia Division of Highways: *Provided,*
99 That the Division of Highways is not responsible for financing, constructing, installing or
100 maintaining related infrastructure which may be located on a Division of Highways' right-of-way.

101 (r) "User" means any member of the public who uses or may have occasion to use county
102 facilities and services as defined herein.

103 (s) "Unincorporated area" and "total unincorporated area" means all lands and resident
104 estates of a county that are not included within the corporate, annexed areas or legal service
105 areas of an incorporated or chartered municipality, city, town or village located in the State of
106 West Virginia.

107 (t) "West Virginia Commissioner of Highways" or "Commissioner of Highways" means the
108 state agency created in section two, article one, chapter seventeen of this code.

109 (u) "West Virginia Economic Development Authority" or "authority" means the
110 governmental entity created in section five, article fifteen, chapter thirty-one of this code.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

1 (a) As a prerequisite to authorizing counties to levy impact fees related to population
2 growth ~~and~~ or public service needs as provided in section seven of this article, counties shall meet
3 the following requirements:

4 (1) A demonstration that current infrastructure is hampering economic development in the
5 county or that the county's population growth rate history as determined from the most recent
6 base decennial census counts of a county, utilizing generally approved standard statistical
7 estimate procedures, in excess of one percent annually averaged over a five-year period since

8 the last decennial census count; or a demonstration that a total population growth-rate projection
9 of one percent per annum for an ensuing five-year period, based on standard statistical estimate
10 procedures, from the current official population estimate of the county;

11 (2) ~~Adopting~~ Adopt a countywide comprehensive plan;

12 (3) ~~Reviewing~~ Periodic review and updating ~~any of a~~ any of a comprehensive plan at no less than
13 five-year intervals;

14 ~~(4) Drafting and adopting a comprehensive zoning ordinance;~~

15 ~~(5) Drafting and adopting a subdivision control ordinance;~~

16 ~~(6) (4) Keeping~~ Imposing and keeping in place a formal building permit and review system
17 which provides a process to regulate the authorization of applications relating to construction or
18 structural modification. The county shall adopt, pursuant to section three-n, article one of this
19 chapter, the state building code into any such building permit and review system; and

20 ~~(7) (5) Providing~~ Provide an improvement program which shall include:

21 (A) Developing and maintaining a list within the county of particular sites with development
22 potential;

23 (B) Developing and maintaining standards of service for capital improvements which are
24 fully or partially funded with revenues collected from impact fees, service fees, property tax
25 collections reallocated as provided in section twenty-five of this article, taxes imposed pursuant
26 to this article, or any combination thereof; and

27 (C) Lists of proposed capital improvements from all areas, containing descriptions of any
28 such proposed capital improvements, cost estimates, projected time frames for constructing such
29 improvements and proposed or anticipated funding sources.

30 (b) Capital improvement programs may include provisions to provide for the expenditure
31 of impact fees for any legitimate county purpose. This may include the expenditure of fees for
32 partial funding of any particular capital improvement where other funding exists from any source
33 other than the county or exists in combination with other funds available to the county: *Provided,*

34 That for such expenditures to be considered legitimate, no county or other local authority may
35 deny or withhold any reasonable benefit that may be derived therefrom from any development
36 project for which such impact fee or fees have been paid.

37 (c) Capital improvement programs for public elementary and secondary school facilities
38 may include provisions to spend impact fees based on a computation related to the following: (1)
39 The existing local tax base; and (2) the adjusted value of accumulated infrastructure investment,
40 based on net depreciation, and any remaining debt owed thereon. Any such computation must
41 establish the value of any equity shares in the net worth of an impacted school system facility,
42 regardless of the existence of any need to expand such facility. Impact fee revenues may only
43 be used for capital replacement or expansion.

44 (d) Additional development areas may be added to any plan or capital improvements
45 program provided for hereunder if a county government so desires. The standards governing the
46 construction or structural modification for any such additional area may not deviate from those
47 adopted and maintained at the time such addition is made.

48 (e) The county may periodically modify ~~annually~~ any capital improvements plan in addition
49 to any impact fee rates based thereon, pursuant to the following:

- 50 (1) The number and extent of development projects begun in the past year;
- 51 (2) The number and extent of public facilities existing or under construction;
- 52 (3) The changing needs of the general population;
- 53 (4) The availability of any other funding sources; and
- 54 (5) Any other relevant and significant factor applicable to a legitimate goal or goals of any
55 such capital improvement plan.

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

1 (a) Impact fees assessed against a development project to fund capital improvements and
2 public services may not exceed the actual proportionate share of any benefit realized by such
3 project relative to the benefit to the resident taxpayers.

4 Notwithstanding any other provision of this code to the contrary, ~~these counties that meet~~
5 ~~the requirements of section six of this article~~ are hereby authorized to assess, levy, collect and
6 administer any tax or fee as has been or may be specifically authorized by the Legislature by
7 general law to the municipalities of this state: *Provided*, That any assessment, levy or collection
8 shall be delayed sixty days from its regular effective date: *Provided, however*, That in the event
9 fifteen percent of the qualified voters of the county by petition duly signed by them in their own
10 handwriting and filed with the county commission within forty-five days after any impact fee or
11 levy is imposed by the county commission, pursuant to this article, the fee or levy protested may
12 not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified
13 voters of such county at any primary, general or special election as the county commission directs.
14 Voting thereon may not take place until after notice of the ~~subcommission of~~ referendum on the
15 ~~fee a or levy on and the ballot ballots has have been given by publication of~~ published as a Class
16 ~~II legal advertisement and publication area shall be~~ in the county where ~~such the~~ fee or levy is
17 imposed: *Provided further*, That counties may not double tax by applying a given tax within any
18 corporate boundary in which that municipality has implemented such tax. Any such taxes or fees
19 collected under this law may be used to fund a proportionate share of the cost of existing capital
20 improvements and public services where it is shown that all or a portion of existing capital
21 improvements and public services were provided in anticipation of the needs of new development.

22 (b) In determining a proportionate share of capital improvements and public services
23 costs, the following factors shall be considered:

24 (1) The need for new capital improvements and public services to serve new development
25 based on an existing capital improvements plan that shows: (A) Any current deficiencies in
26 existing capital improvements and services that serve existing development and the means by

27 which any such deficiencies may be eliminated within a reasonable period of time by means other
28 than impact fees or additional levies; and (B) any additional demands reasonably anticipated as
29 the result of capital improvements and public services created by new development;

30 (2) The availability of other sources of revenue to fund capital improvements and public
31 services, including user charges, existing taxes, intergovernmental transfers, in addition to any
32 special tax or assessment alternatives that may exist;

33 (3) The cost of existing capital improvements and public services;

34 (4) The method by which the existing capital improvements and public services are
35 financed;

36 (5) The extent to which any new development, required to pay impact fees, has contributed
37 to the cost of existing capital improvements and public services in order to determine if any credit
38 or offset may be due such development as a result thereof;

39 (6) The extent to which any new development, required to pay impact fees, is reasonably
40 projected to contribute to the cost of the existing capital improvements and public services in the
41 future through user fees, debt service payments or other necessary payments related to funding
42 the cost of existing capital improvements and public services;

43 (7) The extent to which any new development is required, as a condition of approval, to
44 construct and dedicate capital improvements and public services which may give rise to the future
45 accrual of any credit or offsetting contribution; and

46 (8) The time-price differentials inherent in reasonably determining amounts paid and
47 benefits received at various times that may give rise to the accrual of credits or offsets due new
48 development as a result of past payments.

49 (c) Each county shall assess impact fees pursuant to a standard formula so as to ensure
50 fair and similar treatment to all affected persons or projects. A county commission may provide
51 partial or total funding from general or other nonimpact fee funding sources for capital
52 improvements and public services directly related to new development, when such development

53 benefits some public purpose, such as providing affordable housing and creating or retaining
54 employment in the community.

§7-20-7a. Impact fees for affordable housing.

1 (a) The Legislature finds that:

2 (1) There is a lack of affordable housing in counties that impose impact fees because the
3 cost of the fees along with the economic conditions in those counties has resulted in low and
4 moderate income persons, persons on fixed incomes, the elderly and persons with special needs,
5 not being able to obtain safe, decent and affordable housing;

6 (2) A lack of affordable housing affects the ability of a community to develop and maintain
7 strong and stable economies, and impairs the health, stability and self-esteem of individuals and
8 families; and

9 (3) Financing affordable housing particularly in high growth counties is becoming
10 increasingly difficult.

11 For these reasons, it is in the public interest to encourage counties that have imposed
12 impact fees and those considering the imposition of impact fees to fairly assess and discount
13 impact fees so as not to limit safe, decent and affordable housing.

14 (b) ~~On or before July 1, 2012~~ A county imposing impact fees shall enact an affordable
15 housing component with a discount impact fees schedule, based upon the new homes value
16 compared to the most recent annual single dwelling residential housing index created in section
17 two-b, article one, chapter eleven of this code, to the county's impact fees ordinance. The impact
18 fees schedule shall be updated annually to reflect the changes to the single dwelling residential
19 housing index.

20 (c) The affordable housing component shall:

21 (1) Take into account all the different types of housing, including single family detached,
22 single family attached, duplex, town house, apartment, condominium and manufactured home;
23 and

24 (2) Include a discount for mobile homes, as defined in section one, article one, chapter
25 seventeen-a of this code, based upon the value set out in the National Automobile Dealers
26 Association book.

27 (d) The county commission shall annually review impact fees imposed pursuant to this
28 article and may approve, by a majority vote, any increase or decrease in the impact fees schedule.

§7-20-14. Use of proceeds from sale of bonds.

1 (a) The proceeds from the sale of any bonds issued under authority of section thirteen of
2 this article shall be applied only for the purpose for which the bonds were issued: *Provided*, That
3 any accrued interest and premium received in any such sale shall be applied to the payment of
4 the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds is
5 not ~~be~~ needed for the purpose for which the bonds were issued, then the unneeded portion of the
6 proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of
7 or the interest on the bonds, or held in reserve for the payment thereof.

8 (b) The costs of acquiring any special infrastructure project shall be deemed to include the
9 following:

10 (1) Capital costs, including, but not limited to, the actual costs of the construction of public
11 works or improvements, capital improvements and facilities, new buildings, structures and
12 fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings,
13 structures and fixtures, environmental remediation, the acquisition of equipment and site clearing,
14 grading and preparation;

15 (2) Financing costs, including, but not limited to, an interest paid to holders of evidences
16 of indebtedness issued to pay for project costs, all costs of issuance and any redemption
17 premiums, credit enhancement or other related costs;

18 (3) Real property acquisition costs, including, but not limited to, rights-of-way;

19 (4) Professional service costs, including, but not limited to, those costs incurred for
20 architectural planning, engineering and legal advice and services;

21 (5) Imputed administrative costs, including, but not limited to, reasonable charges for time
22 spent by county employees in connection with the implementation of a project;

23 (6) Relocation costs, including, but not limited to, those relocation payments made
24 following condemnation and job training and retraining;

25 (7) Organizational costs, including, but not limited to, the costs of conducting
26 environmental impact and other studies, and the costs of informing the public with respect to the
27 implementation of project plans;

28 (8) Payments made, in the discretion of the county commission, which are found to be
29 necessary or convenient to the implementation of project plans; and

30 (9) That portion of costs related to the construction of environmental protection devices,
31 storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of
32 streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the
33 project plan, whether or not the construction, alteration, rebuilding or expansion is within the area
34 or on land contiguous thereto.

§7-20-15. No contribution by county.

1 (a) No county commission ~~shall have~~ has the power to pay out of its general funds or
2 ~~otherwise contribute~~ any of the costs of acquiring, constructing or financing a special infrastructure
3 project to be acquired, constructed or financed, in whole or in part, out of the proceeds from the
4 sale of revenue bonds issued under the authority of this article: *Provided*, That this provision ~~shall~~
5 ~~not be construed to~~ does not prevent a county from accepting donations of property to be used
6 as a part of an infrastructure project or to be used for defraying any part of the cost of any
7 infrastructure project or from imposing a service fee as provided in section twelve of this article,
8 which is dedicated, in whole or in part, to the infrastructure project or to payment of debt service
9 on revenue bonds issued pursuant to this article.

10 (b) The bonds issued pursuant to section thirteen of this article shall be payable solely
11 from: (1) The revenue derived from the infrastructure project or the financing thereof; (2) the

12 service fee imposed pursuant to section twelve of this article; ~~or (3) property tax collections as~~
13 ~~provided in section twenty-five of this article; (4) any revenue collected pursuant to this article that~~
14 ~~is deposited in a special revenue fund established by the county commission that is not part of~~
15 ~~the general revenue of the county; or (5) any combination of these sources.~~

16 (c) No county commission shall have the authority under this article to levy any taxes for
17 the purpose of paying any part of the cost of acquiring, constructing or financing an infrastructure
18 project except as provided in this article. However, all necessary preliminary expenses actually
19 incurred by a county commission in the making of surveys, taking options, preliminary planning
20 and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue
21 bonds, may be paid by the county commission out of any surplus contained in any item of
22 budgetary appropriation or any revenues, including, but not limited to, service fees, collected in
23 excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the
24 sale of the revenue bonds.

§7-20-16. Bonds made legal investments.

1 Bonds issued under the provisions of section thirteen of this article shall be legal
2 investments for banks, building and loan associations, and insurance companies organized under
3 the laws of this state and for a business development corporation organized pursuant to chapter
4 thirty-one, article fourteen of this code.

§7-20-23. Excess funds; termination of service fee.

1 (a) When revenue bonds have been issued as provided in section thirteen of this article
2 and the amount of service fees imposed pursuant to section twelve of this article, if any, and
3 collected by the sheriff, less costs of administration, collection and enforcement, exceeds the
4 amount needed to pay project costs and annual debt service, including the finding of required
5 debt service and maintenance reserves, the additional amount shall be set aside in a separate
6 fund and used to retire some or all of the outstanding revenue bonds before their maturity date.

7 (b) Once the revenue bonds issued as provided in section thirteen of this article are no
8 longer outstanding or the county commission determines that sufficient reserves have been or
9 will be accumulated as of a specified date to pay all future debt service on the outstanding bonds,
10 the service fee ~~to payable services on a subsequent issue of revenue bonds~~ imposed pursuant
11 to section twelve of this article may not be imposed or collected for subsequent weeks after that
12 date. Termination of the service fee as provided in this section ~~shall~~ does not bar or otherwise
13 prevent the county commission from collecting service fees that accrued before the termination
14 date.

§7-20-24. Severability.

1 If any section, clause, provision or portion of part I of this article shall be held to be invalid
2 or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other
3 section, clause or provision of this article which is not in and of itself unconstitutional.

PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION AND OTHER INFRASTRUCTURE CAPITAL
IMPROVEMENT PROJECTS.

§7-20-25. Ad valorem property taxes on capital additions.

1 (a) Pursuant to section one-d, article X of the West Virginia Constitution and
2 notwithstanding any provision of this code to the contrary, when a new manufacturing facility or a
3 capital addition to an existing manufacturing facility qualifies for treatment under article six-f,
4 chapter eleven of this code, then for the first tax year that the facility or capital addition thereto
5 does not qualify for tax treatment, in whole or in part, under that article, the sheriff shall deposit
6 property taxes paid by the owner of a new manufacturing facility or a capital addition to an existing
7 manufacturing facility, up to one hundred percent of those taxes as specified in the county
8 commission order authorizing the allocation, in the county's special fund established for county
9 road and bridge construction and other infrastructure capital improvement projects. However, this
10 reallocation does not apply to taxes attributable to excess levies or to levies for bonded

11 indebtedness. Upon order of the county commission, the sheriff shall periodically transfer moneys
12 in this special fund to pay: (1) For capital improvements that are not part of a road construction
13 project on a pay-as-you-go basis; (2) debt service on revenue bonds issued pursuant to this article
14 to pay for infrastructure capital improvements that are not part of a road construction project; and
15 (3) road construction projects as provided in section thirty-five of this article.

16 (b) Subsection (a) of this section takes effect upon ratification of section one-d, article X
17 of the West Virginia Constitution.

18 (c) Reallocation of certain property tax collections as provided in section one-d, article X
19 of the West Virginia Constitution and subsection (a) of this section shall be for the property tax
20 year (calendar year) that begins after the county commission enters an order authorizing the
21 reallocation. However, the county commission may not adopt or enter this order until after receipt
22 of a resolution adopted by the county board of education supporting the infrastructure capital
23 improvement project and, if the project is a road or bridge construction project that will be owned
24 by the West Virginia Department of Transportation, receipt by the county commission of a
25 memorandum of understanding executed by the Commissioner of Highways and the president of
26 the county commission.

27 (d) The reallocation of certain property tax collections pursuant to subsection (a) of this
28 section shall end beginning with the property tax year (calendar year) that begins after the county
29 commission enters an order terminating the reallocation. However, a county's reallocation shall
30 continue for not more than thirty property tax years, unless revenue bonds or refunding revenue
31 bonds for the infrastructure capital improvement project remain outstanding, in which event the
32 county commission shall enter an order terminating the reallocation for the property tax year that
33 begins after the bond trustee certifies to the commission that the debt service has been paid or
34 that sufficient funds exist to pay the remaining debt service as it becomes due.

§7-20-26. 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 an
4 amendment to an existing road construction project plan of the county. This plan may include
5 related infrastructure that is necessary or convenient to economic development adjacent to the
6 proposed road. When a plan includes related infrastructure, the county commission shall consult
7 with the West Virginia Economic Development Authority in order to maximize the development
8 potential of projects in the plan. Any related infrastructure included in a plan or project shall be
9 constructed and maintained by the utility, public service district, company or other private or public
10 entity utilizing or operating the related infrastructure. Road construction project plans are limited
11 to those for the construction, reconstruction, improvement or modernization of state roads, as
12 defined in section one, article twelve-a of this chapter, that are part of the state road system, as
13 defined in that section, or that will become part of the state road system upon completion of the
14 construction. All construction, reconstruction, improvement or modernization and maintenance of
15 state roads shall be done by or under the supervision of the Commissioner of Highways.

§7-20-27. Public hearing required.

1 (a) General. — After the proposed road construction project plan, or proposed project plan
2 amendment, is drafted, the county commission shall hold one or more public hearings at which
3 interested persons may express their views on the county’s proposed road construction project
4 plan, or the proposed amendment to an existing road construction project plan, including related
5 infrastructure, if any.

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

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

10 (2) A description of each road construction project included in the proposed road
11 construction project plan, or the proposed amendment to an existing project plan, including related
12 infrastructure, if any, in sufficient detail to give the public notice of the contents of the proposed
13 project plan, or the proposed amendment to an existing project plan, including any related
14 infrastructure, to cause residents of the county and other interested persons to examine the
15 proposed road construction project plan, or the proposed amendment to an existing project plan,
16 including related infrastructure, and attend the public hearing or submit written comments should
17 they so choose;

18 (3) Identify the places in the county where the proposed road construction project plan, or
19 the proposed amendment to an existing project plan, may be viewed, one of which places shall
20 be the county commission's webpage; and

21 (4) Explain whether one or more projects in the proposed road construction project plan,
22 or in the proposed amendment to an existing project plan, including related infrastructure, if any,
23 will be financed, in whole or in part, by certain ad valorem property tax collections as provided in
24 section twenty-five of this article.

25 (c) Notice by mail. — On or before the first day of publication of the public notice, a copy
26 of the notice shall be sent by first class mail to the Commissioner of Highways, the Director of the
27 West Virginia Development Office, the county superintendent of schools, or president of the
28 county board of education, and to the mayor of each municipality located within the county.
29 Additionally, when the county commission reasonably anticipates that a proposed road
30 construction project may affect a bordering county, a copy of the notice shall also be sent by first
31 class mail to the president of the county commission of the bordering county or counties.

32 (d) Opportunity to be heard. — All persons who appear at the public hearing shall be
33 afforded a reasonable opportunity to express their views on all or any part of the proposed road
34 construction project plan, or the proposed amendment to an existing project plan, including related
35 infrastructure, if any.

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

40 (f) Recording of public hearing. — Each public hearing shall be recorded by a court
41 reporter or be digitally recorded.

§7-20-28. Finalization of project plan or amendment.

1 (a) Resolution of county commission. — After both the public hearing and the public
2 comment period close, and after receipt of any required resolution of the governing body of a
3 municipality as provided in subsection (b) of this section, the county commission may, by
4 resolution, finalize its roads construction project plan, or its proposed amendment to an existing
5 road construction project plan, including related infrastructure, if any, and, after prioritizing each
6 project, adopt a resolution authorizing submission of an application for the road construction
7 project plan, or for the amendment to an existing project plan, as finalized, to the Commissioner
8 of Highways for review and approval, as provided in section eleven of this article.

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

§7-20-29. 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 including related infrastructure, if any, 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, and receipt of a resolution adopted by the county board of education

6 supporting the road construction project plan or plan amendment, the county commission may
7 enter an order that:

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

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

14 (3) Includes a geographic or other designation; and

15 (4) Assigns a project number that begins with the federal information processing code
16 number for the county followed by a hyphen and a consecutive number beginning with the number
17 "01". Each additional road construction project in the county approved by the Commissioner of
18 Highways shall be assigned the next consecutive number.

19 (c) Implements section twenty-five of this article for the next property tax year (calendar
20 year) that begins after the order is entered by the county commission.

§7-20-30. Amendment of road construction project plan.

1 (a) In general. — A road construction project plan adopted by order of the county
2 commission, including related infrastructure, if any, may be amended by the county commission
3 at any time to add one or more projects, or delete one or more projects, or redesignate the order
4 in which projects are to be completed as funds become available: *Provided*, That once a
5 particular road construction project has been approved by the Commissioner of Highways and
6 an intergovernmental agreement is executed as provided in this article for that project, the project
7 may not be revised by the county commission without the express written approval of the
8 Commissioner of Highways.

9 (b) Procedure to amend project plan. — The procedures in this article that apply to creation
10 of a road construction project plan shall also apply to each proposed amendment to the adopted
11 road construction project plan including any related infrastructure.

§7-20-31. 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 enter an order reallocating
3 certain property tax collections as provided in section twenty-five of 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 and to share property tax collections reallocated
6 as provided in section twenty-five of this article, on a pro rata or other basis, to facilitate
7 construction of road construction projects within their respective counties, including related
8 infrastructure, if any.

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

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

16 (e) No withdrawing county commission shall be entitled to the return of any money or
17 property advanced to the road construction project, including related infrastructure, if any.

18 (f) Notwithstanding any provision of this code to the contrary, any county commission that
19 reallocates certain property tax collections as provided in section twenty-five of this article may
20 agree with one or more other counties that also reallocate certain property tax collections as
21 provided in said section that have an interest in completion of a proposed road construction
22 project, including related infrastructure, if any, may enter into an intergovernmental agreement

23 with respect to the pooling of certain property tax collections reallocated pursuant to said section
24 to finance construction of the road construction project, including related infrastructure, if any,
25 either on a cash basis or to pay debt service on revenue bonds issued by the Executive Director
26 of the West Virginia Economic Development Authority to fund the road construction project.

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

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 is authorized to enter into intergovernmental
35 agreements with county commissions or other political subdivisions of the state, or with the federal
36 government or any agency thereof, respecting the financing, planning and construction of roads
37 and bridges, including related infrastructure, if any, constructed pursuant to this part of this article.

§7-20-32. 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 property taxes reallocated pursuant to section twenty-five of this article may have a
4 final 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 road 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 the
9 intergovernmental agreement.

10 (c) Prohibition on termination or rate reduction. — The county commission may not repeal
11 the order allocating property taxes paid on certain manufacturing facilities or capital additions
12 thereto pursuant to section twenty-five of this article, or reduce the rates at which the taxes are
13 imposed, so long as any revenue bonds secured by the taxes remain outstanding, unless
14 payment of the bonds has been secured.

§7-20-33. 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 including related infrastructure, if any, shall: (1) Approve the plan as submitted, in whole or in part;
4 (2) reject the plan as submitted, in whole or in part; or (3) return the plan to the county commission
5 for further development or review in accordance with instructions of the Commissioner of
6 Highways. The decision of the commissioner is final and is not subject to judicial review.

§7-20-34. Contents of application.

1 (a) Each application submitted under section thirty-three of 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, including
4 related infrastructure, if any, that is adopted, after the public hearing, by resolution of the county
5 commission.

6 (2) A true copy of the resolution adopted by the county commission approving submission
7 of the adopted road construction project plan, or the proposed amendment to a project plan
8 previously approved by the Commissioner of Highways, including related infrastructure, if any, to
9 the Commissioner of Highways for approval.

10 (3) A true copy of the notice of public hearing or hearings on the county's proposed road
11 construction plan, or proposed amendment to a previously adopted project plan, and a true copy

12 of the proposed plan, or the proposed amendment to an existing project plan, including related
13 infrastructure, if any, that was the subject of the public hearing.

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

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

20 (6) A statement generally describing each project included in the county's road
21 construction project plan, or the proposed amendment to an existing project plan, including related
22 infrastructure, if any, and identifying:

23 (A) Type of project, as:

24 (i) Road project;

25 (ii) Bridge project; or

26 (iii) Road and bridge project;

27 (B) Related infrastructure, if any;

28 (C) Location of the project;

29 (D) Length of the project, in miles or feet;

30 (E) Scope of the work;

31 (F) Classification of the project as:

32 (i) Preservation project;

33 (ii) Modernization project; or

34 (iii) Expansion project;

35 (G) Estimated cost of the project;

36 (H) Method of financing the project; and

37 (I) Timeline for completion of the project.

38 (7) A map of the county showing the geographic location of each road construction project
39 included in the county's road construction project plan, including related infrastructure, if any.

40 (8) A true copy of the resolution adopted by the governing body of the municipality
41 consenting to the road construction project when the road construction project is located, in whole
42 or in part, within the corporate limits of any municipality.

43 (9) Identification of any businesses or residents that the county commission anticipates
44 will be displaced or leave because of the road construction project, including related infrastructure,
45 if any.

46 (10) A good-faith estimate of the annual net property tax collections reallocated pursuant
47 to section twenty-five of this article and other revenues, if any, to be deposited in the county's
48 subaccount in the County Road and Infrastructure Improvement Account in the State Treasury
49 that will be available to finance the project, in whole or in part.

50 (11) Any additional information the Commissioner of Highways may reasonably require to
51 analyze a proposed road construction project.

52 (b) Review of applications. — The Commissioner of Highways shall review all proposed
53 road construction project plans for conformance to statutory and regulatory requirements, the
54 reasonableness of the project's budget and timetable for completion using the following criteria:

55 (1) The quality of the proposed road construction project and how it addresses
56 transportation problems in the area in which the road construction project will be located;

57 (2) Whether there is credible evidence that unless certain property tax revenues are used
58 to finance the road construction project, in whole or in part, the project would not otherwise be
59 feasible in the timeline proposed by the county commission;

60 (3) Whether the property tax revenues will leverage or be the catalyst for the effective use
61 of state or federal funding that is available;

62 (4) Whether there is substantial and credible evidence that the proposed road construction
63 project, including related infrastructure, if any, is likely to be started and completed in a timely
64 fashion;

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

68 (6) Whether the proposed road construction project, including related infrastructure, if any,
69 will directly or indirectly assist in the creation of additional long-term employment opportunities in
70 the area and the quality of jobs created to include, but not be limited to, wages and benefits;

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

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

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

76 (10) Whether the road construction project, including related infrastructure, if any, is
77 economically and fiscally sound using recognized business standards of finance and accounting.

78 (c) Additional criteria. — The Commissioner of Highways may establish by rule additional
79 criteria for use when evaluating applications and approving or denying the application, in whole
80 or in part.

81 (d) Certification of road construction project. — When the Commissioner of Highways
82 approves a county's road construction project application, in whole or in part, as provided in
83 section thirty-three of this article, the commissioner shall issue to the county commission a written
84 certificate evidencing approval of each approved project, including related infrastructure, if any.

85 (e) Rules. — The Commissioner of Highways may propose rules for legislative approval
86 in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement

87 the county road construction project application approval process and to further describe the
88 criteria and procedures it has established in connection therewith.

§7-20-35. 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, including related infrastructure, if any.
3 However, no state road funds may be used, singly or together with funds from any other source,
4 for any purpose or in any manner contrary to, or prohibited by, the Constitution and laws of this
5 state or the federal government or where such use, in the sole discretion of the commissioner,
6 would jeopardize receipt of federal funds.

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

11 (c) Except as provided in an intergovernmental agreement executed by one or more
12 county commissions and the Commissioner of Highways as provided in this article, a county
13 commission is not required to pay for the cost of constructing, reconstructing, improving or
14 maintaining a road that is part of the state road system as defined in article twelve-a of this chapter
15 or to pay any other expense fairly related to that road.

§7-20-36. Qualifying a transportation project as a public improvement.

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

§7-20-37. 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 and with each county
4 commission with which the Commissioner of Highways has an intergovernmental agreement
5 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) The amount of the bonds issued that are outstanding as of June 30 preceding the due
13 date of the report for each project included in the report if revenue bonds have been issued by
14 the Executive Director of the West Virginia Economic Development Authority;

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

17 (6) The amount of property tax collections deposited into each county's subaccount in the
18 County Road and Infrastructure Improvement Account in the State Treasury during the fiscal year
19 ending June 30 preceding the due date of the commissioner's report; and

20 (7) The amount the Executive Director of the West Virginia Economic Development
21 Authority withdrew from each county's subaccount in the County Road and Infrastructure
22 Improvement Account in the State Treasury during the fiscal year ending June 30 preceding the
23 due date of the report to pay debt service on revenue bonds issued pursuant to this article or to
24 construction projects financed on a pay-as-you-go basis.

§7-20-38. Creation of County Road and Infrastructure Improvement Account.

1 (a) Account created. — There is created in the State Treasury a special revenue revolving
2 fund account known as the County Road and Infrastructure Improvement Account which is an

3 interest-bearing account that shall be invested in the manner described in article six-c, chapter
4 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 allocates property tax collections as provided in section
7 twenty-five of this article.

8 (c) Additional funds. — In addition to the county property taxes collected and allocated as
9 provided in section twenty-five of 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;

14 (3) Any other tax collections that may be deposited in the subaccount; and

15 (4) Any appropriations by the Legislature which are made for this purpose.

16 (d) Expenditures from account. — The Executive Director of the West Virginia Economic
17 Development Authority may withdraw funds from a county's subaccount only in accordance with
18 one or more intergovernmental agreements or contracts executed by the county commission of
19 that county.

§7-20-39. Cash-basis projects; issuance of road construction special revenue bonds by
Executive Director of the West Virginia Economic Development Authority.

1 (a) Cash-basis projects. — Each county commission that has a subaccount in the County
2 Road and Infrastructure Improvement Account established pursuant to this article may, in its
3 discretion and pursuant to an intergovernmental written agreement with the county commission,
4 authorize the Executive Director of the West Virginia Economic Development Authority to use the
5 moneys in its subaccount to finance the costs of road construction projects, including related
6 infrastructure and infrastructure improvement projects, if any, in the county on a cash basis.

7 (b) Special revenue bonds. — Additionally, the county commission may, by
8 intergovernmental written agreement, authorize the West Virginia Economic Development
9 Authority to issue, in the manner prescribed by this article, special revenue bonds secured by
10 certain property tax collections reallocated pursuant to section twenty-five of this article to finance
11 or refinance all or part of a road construction project in the county, including related infrastructure
12 and infrastructure improvement projects, if any, and pledge all or any part of the property tax
13 collections reallocated pursuant to said section for the payment of the principal of and interest on
14 such bonds and the reserves therefor.

§7-20-40. Issuance of county road construction special revenue bonds.

1 (a) Special revenue bonds may be issued by the West Virginia Economic Development
2 Authority pursuant to an intergovernmental written agreement with the county commission or
3 commissions and the Commissioner of Highways to finance or refinance, in whole or in part, road
4 construction projects, including related infrastructure, if any, or county infrastructure projects in
5 an aggregate principal amount not exceeding the amount which the county commission or
6 commissions and the Executive Director of the West Virginia Development Authority mutually
7 agree can be paid as to both principal and interest and reasonable margins for a reserve, if any,
8 therefor from county property tax collections reallocated as provided in section twenty-five of this
9 article. In the discretion of the West Virginia Economic Development Authority, special revenue
10 bonds issued pursuant to this article may be issued for road construction projects, including
11 related infrastructure, if any, in two or more counties.

12 (b) The Executive Director of the West Virginia Economic Development Authority shall
13 thereafter transfer from the county's subaccount all amounts necessary to pay debt service on
14 the bonds.

15 (c) The special revenue bonds shall be authorized to be issued by the West Virginia
16 Economic Development Authority pursuant to the provisions of this article, and shall be secured,
17 shall bear such date and shall mature at such time, not exceeding thirty years from the date of

18 issue except as otherwise provided in this article, shall bear interest at such rate or rates, including
19 variable rates, be in such denominations, be in such form, carry such registration privileges, be
20 payable in such medium of payment and at such place or places and such time or times and be
21 subject to such terms of redemption as the West Virginia Economic Development Authority may
22 authorize. Road construction special revenue bonds may be sold by the West Virginia Economic
23 Development Authority, at public or private sale, at, or not less than, the price the executive
24 director determines. The special revenue bonds shall be executed by manual or facsimile
25 signature by the Executive Director of the West Virginia Economic Development Authority. In
26 case any Executive Director of the West Virginia Economic Development Authority whose
27 signature, or a facsimile of whose signature, appears on any bond ceases to be the Executive
28 Director of the West Virginia Economic Development Authority before delivery of the bonds, such
29 signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had
30 remained in office until such delivery.

§7-20-41. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues and funds.

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

§7-20-42. Refunding bonds.

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

§7-20-43. Obligations of West Virginia Economic Development Authority undertaken
pursuant to this article not debt of state, county, municipality or any political
subdivision.

1 (a) Bonds, including refunding bonds, issued under the authority of this article and any
2 other obligations undertaken by the West Virginia Economic Development Authority pursuant to
3 this article, do not constitute a debt or a pledge of the faith and credit or taxing power of this state
4 or of any county, municipality or any other political subdivision of this state, and the holders and
5 owners thereof have no right to have taxes levied by the Legislature or the taxing authority of any
6 county, municipality or any other political subdivision of this state for the payment of the principal
7 thereof or interest thereon, but such bonds and other obligations are payable solely from the
8 revenues and funds pledged for their payment as authorized by this article unless the bonds are
9 refunded by refunding bonds issued pursuant to this article, which bonds or refunding bonds shall
10 be payable solely from revenues and funds pledged for their payment as authorized by this article.

11 (b) All such bonds, and all documents evidencing any other obligation, shall contain on
12 the face thereof a statement to the effect that the bonds or such other obligation as to both

13 principal and interest are not debts of the state or any county, municipality or political subdivision
14 thereof, but are payable solely from revenues and funds pledged for their payment as authorized
15 by this article.

§7-20-44. Negotiability of bonds issued pursuant to this article.

1 Whether or not the bonds issued pursuant to this article are of such form or character as
2 to be negotiable instruments under the Uniform Commercial Code, such 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.

§7-20-45. Exemption from taxation.

1 All bonds issued by the West Virginia Economic Development Authority pursuant to
2 section forty of this article, and all interest and income thereon, are exempt from all taxation by
3 this state and any county, municipality, political subdivision or agency thereof, except inheritance
4 taxes.

§7-20-46. Personal liability; persons executing bonds issued pursuant to this article.

1 Neither the West Virginia Economic Development Authority, nor any officer or employee
2 of the authority, or the Department of Commerce, or any person executing the bonds issued
3 pursuant to this article, are liable personally on such bonds or subject to any personal liability or
4 accountability by reason of the issuance thereof.

**§7-20-47. Cumulative authority as to powers conferred; applicability of other statutes and
charters; bonds issued pursuant to this article.**

1 The provisions of part II of this article relating to the issuance of bonds shall be construed
2 as granting cumulative authority for the exercise of the various powers herein conferred, and
3 neither the powers nor any bonds issued hereunder are affected or limited by any other provision
4 of this code now or hereafter in force, other than as may be provided in this article, it being the
5 purpose and intention of this article to create full, separate and complete additional powers. The

6 various powers conferred herein may be exercised independently and notwithstanding that no
7 bonds are issued hereunder.

§7-20-48. Cash-basis projects; termination of special allocation of property taxes; excess funds.

1 (a) Cash-basis projects. — When special revenue bonds have been issued as provided in
2 this article and the amount of property tax collections allocated pursuant to section twenty-five of
3 this article, 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 and Infrastructure Improvement Account shall be used to retire outstanding revenue
7 bonds before their maturity date in accordance with the terms of such bonds.

8 (b) Termination of special allocation of property 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 and infrastructure improvement projects have been
11 requested and approved by the West Virginia Economic Development Authority, the reallocation
12 of certain property tax collections as provided in section twenty-five of this article shall end by
13 order adopted by the county commission as provided in this article.

14 (c) Excess funds. — After all intergovernmental agreements with the West Virginia
15 Economic Development Authority required by this article have ended and all debt service on
16 special revenue bonds issued under this article to finance, in whole or in part, the road
17 construction projects and infrastructure improvement projects have been paid or provided for, and
18 reallocation of certain property tax collections as provided in section twenty-five of this article has
19 ended, the Executive Director of the West Virginia Economic Development Authority shall forward
20 the unencumbered balance of moneys remaining in the county's subaccount in the County Road
21 and Infrastructure Improvement Account to the county commission of that county for deposit in
22 the county's general fund.

§7-20-49. Powers supplemental.

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

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

8 (c) West Virginia Economic Development Authority. — The powers conferred by part II of
9 this article are in addition and supplemental to the powers conferred upon the West Virginia
10 Economic Development Authority by the Legislature elsewhere in this code.

§7-20-50. Public officials exempt from personal liability.

1 No member of a county commission or other county officer shall be personally liable on
2 any contract or obligation executed pursuant to the authority contained in part II of this article.
3 Nor shall such contracts or obligations or the issuance of revenue bonds by the West Virginia
4 Economic Development Authority secured by property tax collections allocated as provided in
5 section twenty-five of this article be considered as misfeasance in office.

§7-20-51. Severability.

1 If any section, subsection, subdivision, paragraph, sentence, clause or phrase in part II of
2 this 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.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16d. Bonds for county capital improvements; limitations; authority to issue revenue
bonds; use of funds to pay for projects.

1 (a) The West Virginia Economic Development Authority may, in accordance with the
2 provisions of this article and article twenty, chapter seven of this code, issue special revenue
3 bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or
4 maintaining road and other capital improvement projects under article twenty, chapter seven of
5 this code or to refund the bonds, at the discretion of the authority. The principal amount of the
6 bonds issued under this section may not exceed, in the aggregate, an amount that, in the opinion
7 of the authority, is necessary to provide sufficient funds for achievement of the purposes of this
8 section and article twenty, chapter seven of this code, and is within the limits of moneys pledged
9 for the repayment of the principal, interest and redemption premium, if any, on any revenue bonds
10 or refunding bonds authorized by this section and article twenty, chapter seven of this code. Any
11 revenue bonds issued on or after the effective date of this section which are secured by ad
12 valorem property taxes as provided in section twenty-five, article twenty, chapter seven of this
13 code shall mature at a time or times not exceeding thirty years from their respective dates except
14 as otherwise provided in article twenty, chapter seven of the code. The principal of, and the
15 interest and redemption premium, if any, on the bonds shall be payable solely from the county's
16 subaccount in the County Road and Infrastructure Improvement Account in the State Treasury
17 established in article twenty, chapter seven of this code.

18 (b) All amounts deposited in the fund shall be pledged to the repayment of the principal,
19 interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds
20 authorized by this section. The authority may further provide in the trust agreement for priorities
21 on the revenues paid into the county's subaccount in the County Road and Infrastructure
22 Improvement Account as may be necessary for the protection of the prior rights of the holders of
23 bonds issued at different times under the provisions of this section or article twenty, chapter seven
24 of this code. The bonds issued pursuant to this section shall be separate from all other bonds
25 which may be or have been issued from time to time under the provisions of this article or article
26 twenty, chapter seven of this code. The debt service fund established for each bond issue shall

27 be pledged solely for the repayment of bonds issued pursuant to this section and article twenty,
28 chapter seven of this code. On or prior to May 1 of each year, commencing May 1, 2017, the
29 authority shall certify to each county commission the principal and interest and coverage ratio
30 requirements for the following fiscal year on any revenue bonds or refunding revenue bonds
31 issued pursuant to this section, and for which moneys deposited in the debt service fund have
32 been pledged, or will be pledged, for repayment pursuant to this section.

33 (c) After the authority has issued bonds authorized by this section, and after the
34 requirements of all funds have been satisfied, including coverage and reserve funds established
35 in connection with the bonds issued pursuant to this section, any balance remaining in the debt
36 service fund may be used for the redemption of any of the outstanding bonds issued under this
37 section which, by their terms, are then redeemable or for the purchase of the outstanding bonds
38 at the market price, but not to exceed the price, if any, at which redeemable, and all bonds
39 redeemed or purchased shall be immediately canceled and shall not again be issued. Any funds
40 not used as provided in this subsection shall be returned to the county commission of the county
41 for which the bonds were issued.