

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 606**

5 (By Senators Kessler (Acting President) and Hall,

6 By Request of the Executive)

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

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11
12 A BILL to amend and reenact §17-16A-10 of the Code of West
13 Virginia, 1931, as amended; and to amend and reenact
14 §31-15A-11 of said code, all relating to providing funding and
15 financing mechanisms for the parkways project along U. S.
16 Route 35 in Putnam and Mason counties; allowing funds
17 transferred from West Virginia Infrastructure Fund to be
18 deposited into the U. S. Route 35 Toll Revenue Enhancement
19 Fund for further deposit into a debt service reserve fund;
20 requiring the general manager of the Parkways Authority to
21 certify funding amounts in Debt Service Reserve Fund to
22 certain persons on dates certain; creating the U. S. Route 35
23 Toll Revenue Enhancement Fund within the Parkways Authority;
24 requiring the Parkways Authority to transfer moneys from the

1 U. S. Route 35 Toll Revenue Enhancement Fund to the trustee of
2 toll revenue bonds for deposit into a debt service reserve
3 fund associated with toll revenue bonds; providing prepayment
4 of bonds; providing for the removal of tolls upon the retiring
5 of the toll revenue bonds; providing that subsequent to
6 transfer of certain moneys from the West Virginia
7 Infrastructure Fund into the West Virginia Infrastructure
8 Lottery Revenue Debt Service Fund, other moneys in the West
9 Virginia Infrastructure Fund be dedicated to maintaining the
10 Debt Service Reserve Fund for the U. S. Route 35 parkways
11 project before being dedicated to other infrastructure
12 projects; and making technical corrections.

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

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

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

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

20 **§17-16A-10. Parkway revenue bonds generally.**

21 (a) The Parkways Authority is authorized to provide by
22 resolution for the issuance of parkway revenue bonds of the state
23 for the purpose of paying all or any part of the cost of one or
24 more parkway projects: *Provided*, That this section ~~shall~~ may not

1 be construed as authorizing the issuance of parkway revenue bonds
2 for the purpose of paying the cost of the West Virginia Turnpike,
3 which parkway revenue bonds may be issued only as authorized under
4 section eleven of this article. The principal of and the interest
5 on bonds shall be payable solely from the funds provided for
6 payment, including any reserve funds established therefor. Parkway
7 revenue bonds of the Parkways Authority issued to finance a portion
8 of the costs of constructing a portion of the parkways project
9 along U. S. Route 35 between West Virginia Route 859 in Putnam
10 County and County Route 40 in Mason County shall be referred to in
11 this section and in section eleven, article fifteen-a, chapter
12 thirty-one of this code as "toll revenue bonds" of the Parkways
13 Authority.

14 (b) The bonds of each issue shall be dated, shall bear
15 interest at a rate as may be determined by the Parkways Authority
16 in its sole discretion, shall mature at a time not exceeding forty
17 years from their date or of issue as may be determined by the
18 Parkways Authority, and may be made redeemable before maturity, at
19 the option of the Parkways Authority at a price and under the terms
20 and conditions as may be fixed by the Parkways Authority prior to
21 the issuance of the bonds.

22 (c) The Parkways Authority shall determine the form of the
23 bonds, including any interest coupons to be attached thereto, and
24 shall fix the denomination of the bonds and the place of payment of

1 principal and interest, which may be at any bank or trust company
2 within or without the state.

3 (d) The bonds shall be executed by manual or facsimile
4 signature by the chair of the Parkways Authority, and the official
5 seal of the Parkways Authority shall be affixed to or printed on
6 each bond, and attested, manually or by facsimile signature, by the
7 secretary and treasurer of the Parkways Authority. Any coupons
8 attached to any bond shall bear the manual or facsimile signature
9 of the chair of the Parkways Authority.

10 (e) ~~In case~~ If any officer whose signature or a facsimile of
11 whose signature appears on any bonds or coupons shall cease to be
12 an officer before the delivery of the bonds, the signature or
13 facsimile shall nevertheless be valid and sufficient for all
14 purposes the same as if he had remained in office until delivery.

15 ~~In case~~ If the seal of the Parkways Authority has been changed
16 after a facsimile has been imprinted on the bonds, then the
17 facsimile seal will continue to be sufficient for all purposes.

18 (f) All bonds issued under the provisions of this article
19 shall have all the qualities and incidents of negotiable
20 instruments under the negotiable instruments law of the state. The
21 bonds may be issued in coupon or in registered form, or both, as
22 the Parkways Authority may determine, and provision may be made for
23 the registration of any coupon bonds as to principal alone and also
24 as to both principal and interest, and for the recorders into

1 coupon bonds of any bonds registered as to both principal and
2 interest.

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

6 (h) The proceeds of the bonds of each issue shall be used
7 solely for the payment of the cost of the parkway project or
8 parkway projects for which the bonds were issued, and shall be
9 disbursed in a manner consistent with the resolution authorizing
10 the issuance of the bonds or in the trust agreement securing the
11 bonds.

12 (i) If the proceeds of the bonds of any issue, by error of
13 estimates or otherwise, shall be less than the cost, then
14 additional bonds may in like manner be issued to provide the amount
15 of the deficit. Unless otherwise provided in the resolution
16 authorizing the issuance of the bonds or in the trust agreement
17 securing the bonds, the additional bonds shall be ~~deemed~~ considered
18 to be of the same issue and shall be entitled to payment from the
19 same fund without preference or priority of the bonds first issued.

20 (j) If the proceeds of the bonds of any issue exceed the cost
21 of the parkway project or parkway projects for which the bonds were
22 issued, then the surplus shall be deposited to the credit of the
23 sinking fund for the bonds.

24 (k) Prior to the preparation of definitive bonds, the Parkways

1 Authority may, under like restrictions, issue interim receipts or
2 temporary bonds, with or without coupons, exchangeable for
3 definitive bonds when the bonds have been executed and are
4 available for delivery. The Parkways Authority may also provide
5 for the replacement of any bonds that become mutilated or are
6 destroyed or lost.

7 (1) Bonds may be issued under the provisions of this article
8 without obtaining the consent of any department, division,
9 commission, board, bureau or agency of the state in accordance with
10 this article: *Provided*, That the Parkways Authority shall comply
11 with the provisions of section twenty-eight, article one, chapter
12 five of this code.

13 (m) On or before May 1 of each year, the general manager of
14 the Parkways Authority shall certify to the Director of the Water
15 Development Authority and the Trustee of the Parkways Authority's
16 toll revenue bonds: (1) The amount required to be maintained in the
17 debt service reserve fund established in conjunction with said toll
18 revenue bonds; (2) the amount on deposit as of April 1 in said debt
19 service reserve fund; and (3) the difference between the amounts
20 specified in (1) and (2) above, if any.

21 (n) There is hereby created within the Parkways Authority a U.
22 S. Route 35 Toll Revenue Enhancement Fund, which shall be
23 administered by the Parkways Authority and accounted for by the
24 Parkways Authority as a distinct fund separate and apart from all

1 other funds and accounts of the Parkways Authority. The U. S.
2 Route 35 Toll Revenue Enhancement Fund shall be an interest-bearing
3 account with interest earned credited to and deposited back into
4 said fund. All funds transferred to the Parkways Authority
5 pursuant to subsection (b), section eleven, article fifteen-a,
6 chapter thirty-one of this code shall be deposited by the Parkways
7 Authority into the U. S. Route 35 Toll Revenue Enhancement Fund.
8 Funds deposited into the U. S. Route 35 Toll Revenue Enhancement
9 Fund shall be invested only in United States Treasury securities or
10 other securities that constitute direct obligations of the United
11 States of America or are directly guaranteed by the United States
12 of America that in any case mature at least five business days
13 prior to the next ensuing June 1.

14 (o) On or before June 1 of each year, the Parkways Authority
15 shall transfer all amounts on deposit in the U. S. Route 35 Revenue
16 Enhancement Fund to the trustee of the Parkways Authority's toll
17 revenue bonds for deposit into the debt service reserve fund
18 established in conjunction with the Parkways Authority's toll
19 revenue bonds.

20 (p) Notwithstanding any other provision of this article, if
21 and when the trustee for the Parkways Authority's toll revenue
22 bonds shall have sufficient funds and U. S. Treasury securities on
23 hand in a defeasance escrow account and in other available funds
24 and accounts held under the trust indenture by the trustee that can

1 be made available for defeasance of such bonds that, in the
2 aggregate, are sufficient to pay all principal of, interest on and
3 applicable premium, if any, on such bonds as and when the same
4 shall become due, the Authority shall direct the trustee to defease
5 such bonds at the first practicable date and time in compliance
6 with the applicable trust indenture requirements and federal tax
7 law and regulations and the Authority shall take steps to
8 accomplish such defeasance. Upon such defeasance or the final
9 maturity and final payment of all such bonds, whichever shall first
10 occur, the Authority shall there upon cease to charge and collect
11 tolls along the Authority's U. S. Route 35 parkways project.

12 **CHAPTER 31. CORPORATIONS.**

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

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

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

22 (a) Eighty percent of the funds deposited in the West Virginia
23 Infrastructure Fund shall be dedicated for the purpose of providing
24 funding for the cost of projects as defined in subsection ~~(n)~~ (o),

1 section two of this article.

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

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

1 sixteen-a, chapter seventeen of this code to be further transferred
2 in accordance with subsection (o) of section ten, article sixteen-
3 a, chapter seventeen of this code.

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

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