

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **ENROLLED**

#### **Committee Substitute**

**for**

#### **House Bill 4009**

BY DELEGATES STATLER, AMBLER, COOPER,  
ELLINGTON, D. EVANS, MOFFATT, ROMINE,  
STORCH, WELD AND ZATEZALO

[Passed March 12, 2016; in effect ninety days from  
passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new  
2 article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-  
3 27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-27-  
4 18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-27-27,  
5 §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-27-36, §7-  
6 27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44 and §7-27-45, and  
7 to amend said code by adding thereto a new section, designated §31-15-16c, all relating to road  
8 construction projects; creating a short title; setting forth legislative findings and purpose; defining  
9 terms; authorizing county commissions to propose creation of road construction project plans;  
10 requiring public hearing; setting requirements for notice of public hearing; permitting submission  
11 of written comments; authorizing finalization of road construction project plan after public hearing  
12 by resolution of county commission; requiring prioritization of projects within road construction  
13 project plan; requiring consent of municipalities when road construction project plan located within  
14 its boundaries; authorizing submission of road construction project plan to Commissioner of  
15 Highways; identifying contents of application; requiring Commissioner of Highways review all  
16 proposed road construction project plans; setting forth criteria for review of plans; requiring  
17 decision of Commissioner of Highways within sixty days of receipt; providing certification of  
18 approved project by Commissioner of Highways; requiring assignment of name to project plan  
19 and individual projects within plan by Commissioner of Highways; granting legislative rulemaking  
20 authority; requiring referendum for approval of certain road construction project plans; setting  
21 requirements for referendum election; prohibiting proceeding with road construction project plan  
22 to be financed by county transportation sales and use tax or by issuance of special revenue bonds  
23 unless approved by the voters; providing for amendments to road construction plans; providing  
24 for termination of road construction project plan; providing for termination of county transportation  
25 sales and use taxes; prohibiting termination or rate reduction as long as revenue bonds remain  
26 outstanding, unless payment of special revenue bonds has been secured in full; directing county

27 commission to enter order describing road construction project plan after approval of plan by  
28 Commissioner of Highways and voters of county; setting forth contents of order, including  
29 establishment of county transportation sales and use taxes; limiting county transportation sales  
30 and use taxes to one percent; requiring transportation sales and use taxes to be identical; allowing  
31 joint road construction project plans; clarifying that obligations of parties under intergovernmental  
32 agreements may not be considered debt within the meaning of section six or eight, article X of  
33 the Constitution of West Virginia; authorizing county commissions and Commissioner of Highways  
34 enter into intergovernmental agreements; creating County Road Improvement Account and  
35 subaccounts; authorizing deposit of funds from certain sources into account; authorizing certain  
36 expenditures from county subaccount; allowing road construction projects be financed on cash  
37 basis or by special revenue bonds issued by West Virginia Economic Development Authority;  
38 giving Commissioner of Highways final approval of all road construction projects; providing that  
39 all road construction projects accepted into state road system are under exclusive jurisdiction and  
40 control of Commissioner of Highways; specifying that road construction projects are public  
41 improvements; requiring annual reporting by Commissioner of Highways on county road  
42 construction projects; providing procedures and requirements for issuance of special revenue  
43 bonds by West Virginia Economic Development Authority; permitting special revenue bonds to be  
44 secured by trust agreement between Authority and corporate trustee; providing procedures and  
45 requirements for refunding bonds for county road construction projects; providing that bonds are  
46 not debts of state, county or any political subdivisions; providing that bonds are negotiable  
47 instruments; providing that bonds are exempt from taxation; specifying that neither West Virginia  
48 Economic Development Authority nor its officers or employees nor any persons executing bonds  
49 have personal liability on issued bonds; providing that powers relating to road construction project  
50 plans, construction of projects and issuance of special revenue bonds are additional powers;  
51 requiring county to enter into one or more intergovernmental agreements with Commissioner of  
52 Highways prior to imposing county transportation sales and use taxes; allowing county

53 commissions with approved road construction projects to impose county transportation sales and  
54 use taxes; limiting rate of taxes; establishing tax base for county transportation sales and use  
55 taxes; providing exceptions to tax base; setting forth provisions for when purchases are made in  
56 county without county transportation sales and use taxes and purchase are used in county that  
57 does impose county transportation sales and use taxes; requiring county to notify Tax  
58 Commissioner at least one hundred eighty days before effective date of imposition of county  
59 transportation sales and use taxes; requiring copy of notice be sent to State Auditor and State  
60 Treasurer; requiring Tax Commissioner to administer, collect and enforce county transportation  
61 sales and use tax; authorizing Tax Commissioner to assess a fee for collection of county  
62 transportation sales and use taxes; providing for calculation of cost of service; providing for  
63 deposit of fees retained by Tax Commissioner into Local Sales Tax and Excise Tax Administration  
64 Fund; requiring certain vendors to collect county transportation sales tax; providing for payment  
65 of county transportation use tax to Tax Commissioner; clarifying that county transportation sales  
66 and use taxes are to be collected and paid in addition to certain other taxes; granting purchaser  
67 credit against county transportation use tax for sales tax paid in another county; making county  
68 transportation sales and use taxes subject to sourcing rules; making applicable provisions of law  
69 related to state consumer sales and service tax provisions and state consumer use tax provisions;  
70 making county transportation sales and use taxes subject to West Virginia Tax Procedure and  
71 Administration Act; making West Virginia Tax Crimes and Penalties Act applicable to county  
72 transportation sales and use taxes; providing for date of first application for county transportation  
73 sales and use taxes; providing for deposit of county transportation sales and use taxes into  
74 subaccount of county in County Road Improvement Account; providing for crediting of county  
75 transportation sales and use taxes; authorizing issuance of requisition to Auditor to request  
76 issuance of state warrant for funds in county subaccount; requiring actions by State Auditor and  
77 State Treasurer upon receipt of requisition; providing for correction and adjustment to payments;  
78 setting effective date of county transportation sales and use tax; requiring county commissions to

79 develop and maintain county rate and boundary databases; requiring county commission to notify  
80 Tax Commissioner if tax has been imposed or tax rate has changed; authorizing early retirement  
81 of special revenue bonds under certain conditions; authorizing termination of county  
82 transportation sales and use taxes once special revenue bonds are no longer outstanding or have  
83 been defeased; providing for excess funds be forwarded to county commission for deposit in  
84 county's general fund; providing that all powers are supplemental; exempting public officers from  
85 personal liability; providing for severability; authorizing West Virginia Economic Development  
86 Authority to issue bonds for county capital improvements; setting requirements on issuance of  
87 bonds; setting certain terms for revenue bonds; providing for handling of moneys deposited in  
88 account; providing for establishment of debt service fund for each bond issue; requiring West  
89 Virginia Economic Development Authority certify annually to county commission certain  
90 information regarding bond issue; providing for disposition of balance remaining in debt service  
91 fund after bond issued and requirements have been satisfied; and directing generally how the  
92 West Virginia Economic Development Authority implements and manages bonds issued for  
93 county road construction projects.

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

1           That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-  
3 27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-27-  
4 18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-27-27,  
5 §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-27-36, §7-  
6 27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44, and §7-27-45, and  
7 that said code be amended by adding thereto a new section, designated §31-15-16c; all to read  
8 as follows:

**ARTICLE 27. LETTING OUR COUNTIES ACT LOCALLY ACT.**

PART I. GENERAL.

§7-27-1. Short title.

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

§7-27-2. Purpose and findings.

1 (a) The Legislature hereby makes the following findings:

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

3 (A) Thirty-eight thousand six hundred eighty-four miles of public roads;

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

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

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

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

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

12 (G) One all-American road;

13 (H) Five national byways;

14 (I) Fourteen state byways; and

15 (J) Eight backways.

16 (2) A 2012 road needs assessment prepared for Governor Tomblin's Blue Ribbon  
17 Commission by Wilbur Smith Associates reveals that:

18 (A) During the next seventeen years:

19 (i) Fifty-one thousand one hundred eight lane miles of road will need to be improved;

20 (ii) Ten thousand four hundred one lane miles will need modernization improvements  
21 including lane widening, road reconstruction, and shoulder improvements; and

22 (iii) Three thousand four hundred two lane miles will need to be constructed;

23 (B) Within the next twenty-five years:

24 (i) Eight hundred fourteen bridges will need to be replaced;

25 (ii) Five hundred seventy-seven bridges will need to be widened;

26 (iii) Eight bridges will need to be straightened; and

27 (iv) One bridge will need to be raised;

28 (C) The funding gap for road construction and maintenance over the next twenty-five years

29 is estimated to be \$36.7 billion, excluding new road construction; and

30 (D) The funding gap for bridges construction and maintenance was \$2.4 billion, excluding

31 new bridge construction.

32 (3) Modern, safe roads are critical to economic development.

33 (4) Modern, safe roads and bridges are essential to the growth of our communities and to  
34 the public health, welfare and safety.

35 (5) Counties need greater ability to influence when and where new roads are constructed  
36 and existing roads and bridges are modernized or upgraded, including the ability to recommend  
37 to the Division of Highways road and bridge construction projects and to assist in the financing of  
38 those projects.

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

**§7-27-3. Definitions.**

1 For purposes of this article:

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

6           (2) "Calendar quarter" means the three-month time period beginning on January 1, April  
7 1, July 1 and October 1 of each year.

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

15           (4) "Consumer" means any person purchasing tangible personal property, custom  
16 software or a taxable service from a retailer, as that term is defined in subdivision (14) of this  
17 section or from a seller, as that term is defined in section two, article fifteen-b, chapter eleven of  
18 this code.

19           (5) "County transportation sales tax" means the sales tax imposed by a county commission  
20 pursuant to this article.

21           (6) "County transportation sales and use taxes" means the transportation sales tax and  
22 the transportation use tax imposed by a county commission pursuant to this article.

23           (7) "County transportation use tax" means the use tax imposed by a county commission  
24 pursuant to this article.

25           (8) "Custom software" means software prepared for a particular customer to meet the  
26 specific needs or circumstances of the customer.

27           (9) "Executive Director of the West Virginia Economic Development Authority" means the  
28 chief executive officer of the West Virginia Economic Development Authority created in section  
29 five, article fifteen, chapter thirty-one, of this code.



30 (10) "Expansion projects" are road and bridge construction projects that add to the existing  
31 road system and include, but are not limited to, new roads, new bridges, new lanes and new  
32 interchanges.

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

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

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

51 (14) "Preservation projects" are road and bridge construction projects that take care of  
52 infrastructure already in place and include, but are not limited to, pavement rehabilitation and  
53 reconstruction, and bridge repairs and replacements.

54 (15) "Project costs" means capital costs, costs of financing, planning, designing,  
55 constructing, expanding, improving, or maintaining a road; the cost of land, equipment,

56 machinery, installation of utilities and other similar expenditures; and all other charges or  
57 expenses necessary, appurtenant or incidental to the foregoing.

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

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

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

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

76 (A) Any retailer having or maintaining, occupying or using, within the county, directly or by  
77 a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or  
78 any agent, however called, operating within the county under the authority of the retailer or its  
79 subsidiary, irrespective of whether the place of business or agent is located in the county  
80 permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within

81 this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter  
82 thirty-one-e of this code; or

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

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

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

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

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

99 (C) For purposes of paragraph (B) of this subdivision, the term "service" means and  
100 includes, but is not limited to, customer support services, help desk services, call center services,  
101 repair services, engineering services, installation service, assembly service, delivery service by  
102 means other than common carrier or the United States Postal Service, technical assistance  
103 services, the service of investigating, handling or otherwise assisting in resolving customer issues  
104 or complaints while in the county, the service of operating a mail order business or telephone,  
105 Internet or other remote order business from facilities located within the county, the service of

106 operating a website or internet-based business from a location within the county imposing the use  
107 tax or any other service.

108 (20) "Road" means a public highway, road, bridge, tunnel, or overpass to be used for the  
109 transportation of persons or goods including bicycle and pedestrian facilities.

110 (21) "Road project" means any project to acquire, design, construct, expand, renovate,  
111 extend, enlarge, increase, equip, improve, maintain or operate a road in this state, including, but  
112 not limited to, providing bicycle and pedestrian facilities in conjunction with a road in this state,  
113 that is under the jurisdiction of the Division of Highways.

114 (22) "Road construction project" means and includes any road construction project  
115 included in a road construction project plan that is adopted by a county commission pursuant to  
116 this article and approved by the Commissioner of Highways as provided in this article.

117 (23) "Sale" means any transaction resulting in the purchase or lease of tangible personal  
118 property, custom software or a taxable service from a retailer.

119 (24) "Tax Commissioner" means the State Tax Commissioner provided in article one,  
120 chapter eleven of this code or his or her delegate. The term "delegate" in the phrase "or his or  
121 her delegate", when used in reference to the Tax Commissioner, means any officer or employee  
122 of the state Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or  
123 more redelegations of authority, to perform the functions mentioned or described in this article or  
124 rules promulgated for this article.

125 (25) "Taxpayer" means a taxpayer, as that term is defined in section two, article fifteen-b,  
126 chapter eleven of this code, who is subject to a county transportation sales tax or county  
127 transportation use tax imposed by a county commission pursuant to this article, whether acting  
128 for himself or herself or as a fiduciary, and who is liable for payment of any additions to tax,  
129 penalties or interest imposed by article ten, chapter eleven of this code for failure to timely pay or  
130 remit the county transportation sales taxes or county transportation use taxes imposed by a  
131 county commission pursuant to this article.

132 (26) "Vendor" means any person furnishing services subject to a county's sales and use  
 133 taxes imposed pursuant to this article, or making sales of tangible personal property or custom  
 134 software subject to a county's sales and use taxes imposed pursuant to this article. The terms  
 135 "vendor," "retailer" and "seller" are used interchangeably in this article.

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

138 As used in this article, the terms "computer software," "lease," "purchase price," "retail  
 139 sale," "sale at retail," "sales price," "seller," "service," "selected service," and "tangible personal  
 140 property" have the same meanings as those terms are given in section two, article fifteen-b,  
 141 chapter eleven of this code.

## PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

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

1 A county commission may, upon its 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, 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.

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

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

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

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

8 (2) A description of each road construction project included in the proposed road  
 9 construction project plan in sufficient detail to give the public notice of the contents of the proposed

10 road construction project plan to cause residents of the county and other interested persons to  
11 examine the proposed road construction project plan and attend the public hearing or submit  
12 written comments thereon;

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

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

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

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

34 (e) *Written comments.* – Written comments may be submitted to the county commission  
35 before, during, or within five business days after the last public hearing. Timely mailing of the

36 written comments to the county commission, at the mailing address of the courthouse, postage  
37 prepaid, shall be deemed timely submission of the written comments.

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

1 (a) *Resolution of county commission.* – After the public hearing or hearings are concluded  
2 and the public comment period is closed, and after receipt of any required resolution of the  
3 governing body of a municipality, as required in subsection (b) of this section, the county  
4 commission may, by resolution, finalize its road construction project plan: *Provided*, That if there  
5 is more than one road construction project in the road construction project plan, the road  
6 construction project plan shall include a prioritization of each road construction project.

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

**§7-27-7. Submission of road construction project plan to Commissioner of Highways;  
contents of application.**

1 (a) After the county commission has finalized its road construction project plan, the  
2 commission may submit the plan to the Commissioner of Highways.

3 (b) Each application submitted pursuant to this article shall include:

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

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

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

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

17 (5) A true copy of the transcript of the public hearing or hearings, or a true copy of the  
18 digital recording of the public hearing or hearings,

19 (6) True copies of any written comments received by the commission on the proposed  
20 road construction project plan, or the proposed amendment to an existing project plan;

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

23 (A) Type of project, as a road project, bridge project, or both road and bridge project;

24 (B) Location of the project;

25 (C) Length of the project (in miles or feet);

26 (D) Scope of the work;

27 (E) Classification of the project as a preservation project, modernization project, or  
28 expansion project;

29 (F) Estimated cost of the project;

30 (G) Method of financing the project; and

31 (H) Timeline for completion of the project.

32 (8) A map of the county showing the geographic location of each road construction project  
33 included in the county's road construction project plan;

34 (9) When the road construction project is located, in whole or in part, within the corporate  
35 limits of any municipality, a true copy of the resolution adopted by the governing body of the  
36 municipality consenting to the road construction project;



37 (10) Identification of any businesses or residents that the county commission anticipates  
38 will be displaced because of the road construction project;

39 (11) A good faith estimate of the annual net county transportation sales and use tax  
40 collections to be deposited in the county's sub-account in the County Road Improvement Account  
41 created pursuant to section fourteen of this article that will be available to finance the project, in  
42 whole or in part; and

43 (12) Any additional information the Commissioner of Highways may reasonably require to  
44 analyze a proposed road construction project.

**§7-27-8. Application to Commissioner of Highways for approval of road construction  
project plans.**

1 (a) *Review of applications.* – The Commissioner of Highways shall review all proposed  
2 road construction project plans for conformity to statutory and regulatory requirements, the  
3 reasonableness of the project's budget, and the timetable for completion using the following  
4 criteria:

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

7 (2) Whether there is credible evidence that, unless county transportation sales and use  
8 tax revenues are used to finance the road construction project, in whole or in part, the project  
9 would not otherwise be feasible in the time line proposed by the county commission;

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

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

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

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

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

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

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

25 (10) Whether the road construction project is economically and fiscally sound using  
26 recognized business standards of finance and accounting; and

27 (11) Any other additional criteria established by the Commissioner of Highways by  
28 legislative rule.

29 (b) *Decision of Commissioner of Highways.* – Within sixty days after receipt of the county  
30 commission’s proposed road construction project plan or an amendment to a previously approved  
31 project plan, the Commissioner of Highways shall either (1) approve the plan as submitted, in  
32 whole or in part; (2) reject the plan as submitted, in whole or in part; or (3) return the plan to the  
33 county commission for further development or review in accordance with instructions from the  
34 Commissioner of Highways. The decision of the commissioner is final and is not subject to judicial  
35 review.

36 (c) *Certification of road construction project.* – If the Commissioner of Highways approves  
37 a county's road construction project application, in whole or in part, the commissioner shall issue  
38 to the county commission a written certificate evidencing approval of each approved project.

39 (d) *Assignment of project plan and individual projects.* – Upon approval of a road  
40 construction project plan or an amendment to an existing project, the Commissioner of Highways  
41 shall:

42 (1) Assign a name to the road construction project for identification purposes, which name  
43 may include a geographic or other designation; and

44 (2) Assign each project within the road construction project plan a project number that  
45 begins with the federal information processing (FIPS) code number for the county, followed by a  
46 hyphen and a consecutive number beginning with the number "01," with each additional road  
47 construction project in the plan being assigned the next consecutive number.

48 (e) *Rules.* – The Commissioner of Highways may propose rules for legislative approval in  
49 accordance with article three, chapter twenty-nine-a of this code to implement the county road  
50 construction project application approval process and to further identify and describe the criteria  
51 and procedures he or she has established in connection therewith.

**§7-27-9. Requirement for referendum on final road construction project plan.**

52 (a) After obtaining project certification from the Commissioner of Highways under section  
53 eight of this article the county commission shall submit the question of the adoption of a road  
54 construction project plan to the voters in a county-wide referendum to be held in conjunction with  
55 a primary or general election. The question to be voted on in the referendum shall identify the  
56 project plan by its name and location, its projected cost estimate and how the cost of the road  
57 construction project plan is to be financed. The question shall state if the road construction plan  
58 is to be financed in whole or in part by the imposition of a county transportation sales and use tax,  
59 including the rate of the tax to be imposed, and if it is to be financed in whole or in part by the  
60 issuance of special revenue bonds as authorized by this article.

61 (b) No county commission may proceed with a road construction plan which will be  
62 financed, in whole or in part, by the imposition of a transportation sales and use tax or by the  
63 issuance of special revenue bonds as authorized by this article unless a majority of voters casting  
64 votes in the referendum vote to approve the road construction project plan.

**§7-27-10. Amendment of road construction project plan.**

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

5           (b) *Procedure to amend project plan.* – The procedures that apply to creation of a road  
6 construction project plan shall also apply to each proposed amendment to the adopted road  
7 construction project plan.

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

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

5           (b) *Extension of plan.* – Each amendment of a county's roads construction project plan  
6 approved by the Commissioner of Highways that results in execution of an intergovernmental  
7 agreement by the county commission and the Commissioner of Highways shall extend the term  
8 of the project plan for thirty years from the date on which the intergovernmental agreement is fully  
9 executed.

10           (c) *Termination of county transportation sales and use taxes.* – The county transportation  
11 sales and use tax imposed by a county commission pursuant to this article shall expire on the first  
12 day of the calendar quarter that begins one hundred twenty days after the following:

13           (1) If no special revenue bonds are issued as authorized by this article, the day the county  
14 commission notifies the Tax Commissioner in writing that its road construction projects financed,  
15 in whole or in part, with transportation sales and use tax revenue have been completed; or

16           (2) If special revenue bonds have been issued as authorized by this article, the West  
17 Virginia Economic Development Authority certifies to the county commission and to the Tax

18 Commissioner that all principal and interest due, or to become due, on the bonds issued under  
19 this article has been paid or is otherwise provided for.

20 (d) *Shorter period.* – The county commission may set an earlier termination date for the  
21 county transportation sales and use tax imposed pursuant to this article: *Provided*, That no  
22 revenue bonds may have a final maturity date later than the termination date of the county  
23 transportation sales and use tax.

24 (e) *Termination order.* – Prior to expiration of the county transportation sales and use tax,  
25 the county commission shall adopt an order terminating the county transportation sales and use  
26 tax on the date specified therein: *Provided*, That the order may not extinguish any person's liability  
27 for payment of county transportation sales and use taxes that were assessed prior to termination  
28 of the taxes. With respect to any such taxes, the rights and duties of the taxpayer and of the State  
29 of West Virginia shall be fully and completely preserved.

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

### PART III. IMPLEMENTATION OF ROAD CONSTRUCTION PROJECT PLAN.

#### **§7-27-12. Order adopting road construction project plan or plan amendment.**

1 Upon approval of a road construction project plan or an amendment to an existing project  
2 plan by the Commissioner of Highways, and approval of the voters in the referendum provided in  
3 section nine of this article, the county commission shall enter an order that:

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

7 (2) Identifies the road construction project plan by the name assigned by the  
8 Commissioner of Highways, and identifies each project within the road construction project plan  
9 by the project number assigned by the Commissioner of Highways; and

10 (3) Establishes a county transportation sales tax and a county transportation use tax as  
11 provided in this article at rates not to exceed one percent: *Provided*, That the rate of the sales tax  
12 and the rate of the use tax shall at all times be identical.

**§7-27-13. 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 funded by county  
3 transportation sales and use taxes imposed pursuant to this article.

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

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

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

17 (e) No county commission that withdraws from an intergovernmental agreement shall be  
18 entitled to the return of any money or property advanced to the road construction project.

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

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

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

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

**§7-27-14. Creation of County Road Improvement Account.**

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

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

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

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

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

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

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

**§7-27-15. Cash basis projects; issuance of road construction special revenue bonds by  
West Virginia Economic Development Authority.**

1           (a) *Cash basis projects.* – Each county commission that has a subaccount in the County  
2 Road Improvement Account established pursuant to this article may, in its discretion and pursuant  
3 to an intergovernmental written agreement with the county commission, authorize the  
4 Commissioner of Highways to use the moneys in its subaccount to finance the costs of road  
5 construction projects in the county on a cash basis.

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



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

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

7 (b) All road construction projects that shall be accepted as part of the state road system,  
8 and all real property interests and appurtenances, are 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.

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

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

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

1 Each year, the Commissioner of Highways shall prepare a report giving the status of each  
2 road construction project being constructed pursuant to this article and file it by October 1 with  
3 the Governor, the Joint Committee on Government and Finance of the Legislature and with each  
4 county commission with which the Commissioner of Highways has an intergovernmental  
5 agreement executed pursuant to this article. The report shall include the following information:

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

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

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

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

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

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

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

#### PART IV. COUNTY ROAD CONSTRUCTION SPECIAL REVENUE BONDS.

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

1 Special revenue bonds may be issued by the West Virginia Economic Development  
2 Authority pursuant to an intergovernmental written agreement between the county commission  
3 and the Commissioner of Highways to finance or refinance, in whole or in part, road construction  
4 projects in an aggregate principal amount not exceeding the amount which the county  
5 commission(s) and the Authority mutually agree can be paid as to both principal and interest and  
6 reasonable margins for a reserve, if any, therefor from county transportation sales and use tax  
7 collections. In the discretion of the Authority, special revenue bonds issued pursuant to this article  
8 may be issued for road construction projects in two or more counties.

9 (1) The Authority shall establish a fund to deposit county transportation sales and use tax  
10 collections to pay debt service on the bonds.

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

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

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

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

7 Authority may authorize and approve. Any trust agreement may contain a pledge or assignment  
8 of revenues to be received in connection with the financing.

**§7-27-21. Refunding bonds.**

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

**§7-27-22. Obligations of the 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 this article and any other obligations  
2 undertaken by the West Virginia Economic Development Authority pursuant to this article, do not  
3 constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county,  
4 municipality or any other political subdivision of this state, and the holders and owners thereof  
5 have no right to have taxes levied by the Legislature or the taxing authority of any county,  
6 municipality or any other political subdivision of this state for the payment of the principal thereof  
7 or interest thereon. The bonds and other obligations are payable solely from the revenues and  
8 funds pledged for their payment as authorized by this article unless the bonds are refunded by

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

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

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

**§7-27-24. Exemption from taxation.**

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

**§7-27-25. 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 West Virginia Economic Development Authority, or any person executing the bonds issued  
3 pursuant to the provisions of this article, are liable personally on the bonds or subject to any  
4 personal liability or accountability by reason of the issuance thereof.

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

1 The provisions of this article relating to the issuance of bonds shall be construed as  
2 granting cumulative authority for the exercise of the various powers herein conferred, and neither  
3 the powers nor any bonds issued hereunder are affected or limited by any other statutory or  
4 charter provision now or hereafter in force, other than as may be provided in this article, it being

5 the purpose and intention of this article to create full, separate and complete additional powers.  
 6 The various powers conferred herein may be exercised independently and notwithstanding that  
 7 no bonds are issued hereunder.

PART V. COUNTY TRANSPORTATION SALES AND USE TAXES.

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

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

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

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

5 (b) *Rate of county transportation sales and use taxes.* – The rate of the county  
 6 transportation sales tax and the rate of the county transportation use tax shall be identical and  
 7 may not exceed one percent of the purchase price subject to tax under article fifteen, chapter  
 8 eleven of this code, or one percent of the value upon which the county transportation use tax is  
 9 imposed.

10 (c) *County transportation sales tax base.* – In general, the tax base of the county  
 11 transportation sales tax imposed pursuant to this article shall be identical to the consumer sales  
 12 and service tax base of this state, except that: (1) The exemption in section nine-f, article fifteen,  
 13 chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation

14 is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection  
15 (e) of this section.

16 (d) *County transportation use tax base.* – The base of a county transportation use tax  
17 imposed pursuant to this article shall be identical to the base of the use tax imposed pursuant to  
18 article fifteen-a, chapter eleven of this code, on the use of tangible personal property, custom  
19 software and taxable services, within the boundaries of the county, except that: (1) The exemption  
20 in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales  
21 tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not  
22 apply as provided in subsection (e) of this section.

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

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

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

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

30 (4) Any use of tangible personal property, custom software or the results of a taxable  
31 service that is exempt from the tax imposed by article fifteen-a, chapter eleven of this code, except  
32 that this exception may not apply to any use within the county when the state consumer sales and  
33 service tax imposed by article fifteen, chapter eleven of this code, was paid to the seller at the  
34 time of purchase but the county transportation sales tax was not paid to the seller; and

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

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

40 service are used in a county that does impose county transportation sales and use taxes pursuant  
 41 to this article:

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

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

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

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

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

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

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

5 (b) *Fee for services.* – The Tax Commissioner may assess a fee to be retained from  
 6 collections authorized by this article. Said fee shall not exceed the lesser of the cost of the service



7 provided or five percent of the net amount of the taxes imposed pursuant to this article that are  
8 collected by the Tax Commissioner during any fiscal year, notwithstanding any provision of this  
9 code or rule to the contrary. For purposes of calculating the cost of the service provided, the  
10 provisions of section eleven-c, article ten, chapter eleven of this code and the legislative rules  
11 promulgated pursuant thereto shall be utilized.

12 (c) *Deposit of fees in special revenue account.* – The fees retained by the Tax  
13 Commissioner pursuant to subsection (b) of this section shall be deposited in the Local Sales Tax  
14 and Excise Tax Administration Fund, created pursuant to section eleven-c, article ten, chapter  
15 eleven of this code.

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

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

**§7-27-32. Payment of county transportation use tax.**

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) A person is entitled to a credit against the use tax imposed by a county commission  
2 pursuant to this article on the use of tangible personal property, custom software or the results of  
3 a taxable service in the county equal to the amount, if any, of sales tax lawfully paid to another  
4 county for the acquisition of that tangible personal property, custom software or taxable service.  
5 However, the amount of credit allowed may not exceed the amount of use tax imposed on the  
6 use of the property or service in the county of use and no credit may be allowed for payment of  
7 county special district excise taxes imposed pursuant to article twenty-two of this chapter.

8 (b) For purposes of this section:

9 (1) "County" means a county in this state or a comparable unit of local government in  
10 another state;

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

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

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

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

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

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

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

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

10 (c) *Definitions incorporated.* – Any term used in this article or in an order adopted by a  
11 county commission pursuant to this article imposing county transportation sales and use taxes  
12 that is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and used in

13 those articles in a similar context, shall have the same meaning when used in this article or in an  
14 order entered by the county commission pursuant to this article imposing county transportation  
15 sales and use taxes, unless the context in which the term is used clearly indicates that a different  
16 result is intended by the Legislature.

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

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

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

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

**§7-27-39. Local rate and boundary changes.**

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

6 (b) *Printed catalogs.* – County transportation sales and use taxes and any change in the  
7 rate of taxation shall first apply to purchases from printed catalogs where the purchaser computed  
8 the tax based upon the local tax rate published in the catalog only on and after the first day of a

9 calendar quarter that begins after the Tax Commissioner provides sellers at least one hundred  
10 twenty days' notice of imposition of the tax or a change in the rate of taxation.

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

**§7-27-40. Deposit of county transportation sales and use taxes; payment to Division of  
Highways.**

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

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

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

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

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

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

**§7-27-41. Effective date of county transportation sales and use tax.**

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

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

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

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

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

**§7-27-42. Early retirement of special revenue bonds; termination of county transportation sales and use taxes; excess funds.**

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

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

16 (c) *Excess funds.* – After all intergovernmental agreements with the Commissioner of  
17 Highways have ended and all debt service on special revenue bonds issued to finance, in whole  
18 or in part, the road construction projects has been paid or provided for, and county transportation  
19 sales and use taxes imposed by the county have terminated, the Commissioner of Highways shall

20 forward the unencumbered balance of moneys remaining in the county's subaccount in the  
 21 County Road Improvement Account to the county commission of that county for deposit in the  
 22 county's general fund.

#### PART VI. MISCELLANEOUS.

##### **§7-27-43. Powers supplemental.**

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

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

7 (c) *West Virginia Economic Development Authority.* - The powers conferred by this article  
 8 are in addition and supplemental to the powers conferred upon the West Virginia Economic  
 9 Development Authority by the Legislature elsewhere in this code.

##### **§7-27-44. Public officials exempt from personal liability.**

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

##### **§7-27-45. Severability.**

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

#### **CHAPTER 31. CORPORATIONS**

##### **ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.**



**§31-15-16c. 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 seven, chapter seven of this code, issue special  
3 revenue bonds from time to time, to pay for a portion of the cost of constructing, equipping,  
4 improving or maintaining road projects under article twenty seven, chapter seven of this code or  
5 to refund the bonds, at the request of the county. The principal amount of the bonds issued under  
6 this section may not exceed, in the aggregate, an amount that, in the opinion of the Authority, is  
7 necessary to provide sufficient funds for achievement of the purposes of this section and article  
8 twenty seven, chapter seven of this code, and is within the limits of moneys pledged for the  
9 repayment of the principal, interest and redemption premium, if any, on any revenue bonds or  
10 refunding bonds authorized by this section and article twenty seven, chapter seven of the code.  
11 Any revenue bonds issued on or after the effective date of this section which are secured by  
12 county transportation sales and use tax shall mature at a time or times not exceeding thirty years  
13 from their respective dates except as otherwise provided in article twenty-seven, chapter seven  
14 of the code. The principal, interest and redemption premium, if any, on the bonds shall be payable  
15 solely from the county's subaccount in the County Road Improvement Account in the State  
16 Treasury established in article twenty-seven, chapter seven of this code.

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

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

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