

WEST VIRGINIA LEGISLATURE
2017 THIRD EXTRAORDINARY SESSION

Introduced

Senate Bill 3001

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[BY REQUEST OF THE EXECUTIVE]

[Introduced December 4, 2017]

1 A BILL to amend and reenact §17-3-1 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new article, designated §17-26A-1, §17-26A-2, §17-
3 26A-3, §17-26A-4, §17-26A-5, §17-26A-6, §17-26A-7, §17-26A-8, §17-26A-9, §17-26A-
4 10, §17-26A-11, §17-26A-12, §17-26A-13 and §17-26A-14, all relating generally to state
5 road bonds; requiring proceeds from the sale of state road bonds issued pursuant to
6 Roads to Prosperity Amendment of 2017 to be kept in separate and distinct account in the
7 State Road Fund; authorizing cost of issuance to be paid from State Road Fund; providing
8 definitions; authorizing sale of bonds; providing schedule for sale of bonds; providing
9 amount of bonds to be sold; providing conditions on the sale and issuance of bonds;
10 creating the Roads to Prosperity Bond Debt Service Fund; authorizing investment of the
11 fund; providing bond covenants; requiring certification of annual debt service amount;
12 prohibiting conflicts of interest; creating a criminal misdemeanor offense and providing
13 penalties for the proceeds from the sale of bonds to inure to the benefit of or be distributed
14 to officers or employees of the state except to pay reasonable compensation for services
15 rendered; declaring state road bonds lawful investments; allowing for the refund of bonds;
16 allowing for continuity of debt service in termination or dissolution; authorizing the
17 Treasurer to select financial advisor; authorizing the Governor to select bond counsel and
18 underwriter; allowing for payment of necessary expenses for issuance from funds;
19 dedicating tax and fee collections for debt service; and setting a schedule for certain
20 deposits into the Roads to Prosperity Bond Debt Service Fund.

Be it enacted by the Legislature of West Virginia:

1 That §17-3-1 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that said code be amended by adding thereto a new article, designated §17-26A-
3 1, §17-26A-2, §17-26A-3, §17-26A-4, §17-26A-5, §17-26A-6, §17-26A-7, §17-26A-8, §17-26A-9,
4 §17-26A-10, §17-26A-11, §17-26A-12, §17-26A-13 and §17-26A-14, all to read as follows:

ARTICLE 3. STATE ROAD FUND.

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

1 There shall be a State Road Fund, which shall consist of the proceeds of all state license
2 taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees
3 imposed upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven
4 vehicles; all sums of money which may be donated to such fund; all proceeds derived from the
5 sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect
6 the "Better Roads Amendment" to the Constitution of this state, adopted in November, 1964,
7 except that the proceeds from the sale of these bonds shall be kept in a separate and distinct
8 account in the State Road Fund; all proceeds from the sale of state bonds issued pursuant to any
9 resolution or act of the Legislature carrying into effect the "Safe Roads Amendment of 1996" to
10 the Constitution of this state, adopted in November, 1996, except that the proceeds from the sale
11 of these bonds shall be kept in a separate and distinct account in the State Road Fund; all
12 proceeds from the sale of state bonds issued pursuant to any resolution or act of the Legislature
13 carrying into effect the "Roads to Prosperity Amendment of 2017" to the Constitution of this state,
14 adopted in October 2017, except that the proceeds from the sale of these bonds shall be kept in
15 a separate and distinct account in the State Road Fund; all moneys and funds appropriated to it
16 by the Legislature; and all moneys allotted or appropriated by the federal government to this state
17 for road construction and maintenance pursuant to any act of the Congress of the United States;
18 the proceeds of all taxes imposed upon and collected from any person, firm or corporation and of
19 all taxes or charges imposed upon and collected from any county, district or municipality for the
20 benefit of the fund; the proceeds of all judgments, decrees or awards recovered and collected
21 from any person, firm or corporation for damages done to, or sustained by, any of the state roads
22 or parts thereof; all moneys recovered or received by reason of the violation of any contract
23 respecting the building, construction or maintenance of any state road; all penalties and forfeitures
24 imposed, recovered or received by reason thereof; and any and all other moneys and funds
25 appropriated to, imposed and collected for the benefit of such fund, or collected by virtue of any

26 statute and payable to such fund: *Provided*, That notwithstanding any provisions of this code to
 27 the contrary, 50¢ of every license fee paid pursuant to the provisions of subdivision (2), subsection
 28 (a), section eight, article two, chapter seventeen-b of this code shall be paid to the special fund
 29 established pursuant to the provisions of subsection (a), section twelve, article two, chapter three
 30 of this code.

31 When any money is collected from any of the sources aforesaid, it shall be paid into the
 32 State Treasury by the officer whose duty it is to collect and account for the same, and credited to
 33 the State Road Fund, and shall be used only for the purposes named in this chapter, which are:
 34 (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and
 35 any costs related to the issuance thereof, and set aside and appropriated for that purpose; (b) to
 36 pay the expenses of the administration of the ~~road department~~ Division of Highways; and (c) to
 37 pay the cost of maintenance, construction, reconstruction and improvement of all state roads.

ARTICLE 26A. ROADS TO PROSPERITY STATE ROAD BONDS.

§17-26A-1. Definitions.

- 1 For purposes of this article:
- 2 (1) "Commissioner" means the West Virginia Commissioner of Highways continued
 3 pursuant to section one, article two-a of this chapter;
- 4 (2) "Amendment" means the amendment to the constitution of this state entitled "Roads
 5 to Prosperity Amendment of 2017" as approved by referendum in October, 2017;
- 6 (3) "State road bond" means any bond or bonds issued by the state pursuant to section
 7 two of this article;
- 8 (4) "Division" means the West Virginia Division of Highways established under section
 9 one, article two-a of this chapter, or any successor to all or any substantial part of its powers and
 10 duties; and
- 11 (5) "Secretary" means the Secretary of the West Virginia Department of Transportation.

§17-26A-2. State road general obligation bonds; amount; when may issue.

1 (a) Bonds of the State of West Virginia, under authority of the "Roads to Prosperity
2 Amendment of 2017" of the principal amount not to exceed in the aggregate \$1.6 billion are
3 authorized to be issued and sold for matching available federal funds for highway and bridge
4 construction in this state and for general highway and secondary roads and bridge construction
5 or improvements in each of the fifty-five counties in this state, as provided for by the constitution
6 and the provisions of this article. During the fiscal year beginning July 1, 2017, the principal
7 amount of \$800 million in bonds may be sold. During the fiscal year beginning July 1, 2018, the
8 principal amount of \$400 million in bonds may be sold. During the fiscal year beginning July 1,
9 2019, the principal amount of \$200 million in bonds may be sold. During the fiscal year beginning
10 July 1, 2020, the principal amount of \$200 million in bonds may be sold. Any amount not sold in
11 a fiscal year may be carried forward and issued in any subsequent year before July 1, 2021.

12 (b) These bonds may be issued by the Governor upon resolution passed by the
13 Legislature authorizing the same. The bonds shall bear the date and mature at the time, bear
14 interest at the rates, be in amounts, be in denominations, be in the registered form, carry
15 registration privileges, be due and payable at the times and place and in amounts, and be subject
16 to terms of redemption as the resolution may allow.

17 (c) Both the principal and interest of the bonds shall be payable in the lawful money of the
18 United States of America, and the bonds and the interest thereon shall be exempt from taxation
19 by the State of West Virginia, or by any county, district or municipality thereof, which fact shall
20 appear on the face of the bonds as part of the contract with the holder of the bond.

21 (d) The bonds shall be executed on behalf of the State of West Virginia, by the manual or
22 facsimile signature of the Governor, under the Great Seal of the State or a facsimile of the Great
23 Seal, and countersigned by the manual or facsimile signature of the Secretary of State.

§17-26A-3. Creation of debt service fund to pay debt service on state road general obligation bonds.

1 There is hereby created a special account in the State Treasury, which shall be designated

2 and known as the "Roads to Prosperity Bond Debt Service Fund", into which shall be deposited
3 any and all amounts appropriated by the Legislature from the State Road Fund or funds from any
4 source whatsoever which is made liable by law for the purpose of paying the interest on the bonds
5 or paying off and retiring bonds issued pursuant to this article.

§17-26A-4. Roads to Prosperity Bond Debt Service Fund; sources used to pay bonds, interest and cost of issuance; investment of remainder.

1 (a) All funds deposited to the credit of the Roads to Prosperity Bond Debt Service Fund
2 shall be kept by the State Treasurer in a separate account, and all money belonging to the fund
3 shall be deposited in the Treasury to the credit of the fund.

4 (b) The fund shall be applied by the State Treasurer for payments on the principal and
5 interest on bonds sold pursuant to this article as it becomes due and payable and any costs
6 related to the issuance thereof. The remainder of the fund, if any, shall be invested by the West
7 Virginia Board of Treasury Investments in the manner authorized under article six-c, chapter
8 twelve of this code.

§17-26A-5. Covenants of state.

1 The State of West Virginia covenants and agrees with the holders of the bonds issued
2 pursuant hereto as follows: (1) That the bonds are a direct and general obligation of the State of
3 West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the
4 principal and interest of the bonds; (3) that an annual state tax shall be collected in an amount
5 sufficient to pay, as it may accrue, the interest on the bonds and the principal thereof; and (4) that
6 the tax shall be levied in any year only to the extent that the moneys transferred to the Roads to
7 Prosperity Bond Debt Service Fund as provided in sections three and four of this article which are
8 irrevocably set aside and appropriated for and applied to the payment of the interest on and
9 principal of any bond becoming due and payable in such year are insufficient therefor.

§17-26A-6. Sale by Governor; certification of annual debt service amount.

1 The Governor shall sell the bonds herein authorized at a time or times as provided by

2 resolutions enacted by the Legislature. The Governor, in his or her discretion, may, by executive
3 message, request that a resolution be proposed for the issuance of bonds pursuant to this article.
4 The Governor shall determine the manner by which bonds will be sold at an aggregate price equal
5 to, above or below par value. On or before June 1st in the fiscal year in which the first bonds are
6 issued pursuant to this article and June 1st of each fiscal year, the commissioner shall certify to
7 the Treasurer and Secretary of the Department of Revenue the principal and interest requirement
8 for the following fiscal year on any bonds issued pursuant to this article.

§17-26A-7. Conflicts of interest.

1 No part of the proceeds from the sale of bonds under this article may inure to the benefit
2 of or be distributable to the officers or employees of the state except to pay reasonable
3 compensation for services rendered to the state. Any person violating the provisions of this
4 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
5 \$1,000, or confined in jail not more than one year, or both fined and confined.

§17-26A-8. State road bonds lawful investments.

1 All state road bonds issued pursuant to this article shall be lawful investments for banking
2 institutions, societies for savings, building and loan associations, savings and loan associations,
3 deposit guarantee associations, trust companies, and insurance companies, including domestic
4 for life and domestic not for life insurance companies.

§17-26A-9. Refunding bonds.

1 Any state road general obligation bonds which are outstanding may at any time be
2 refunded by the issuance of refunding bonds in an amount deemed necessary to refund the
3 principal of the bonds to be refunded, together with any unpaid interest thereon; to accomplish
4 the purpose of the amendment and to pay any premiums necessary to be paid in connection
5 therewith. Any refunding may be effected whether the state road general obligation bonds to be
6 refunded shall have then matured or shall thereafter mature. Any refunding bonds issued pursuant
7 to this article shall be payable from the Roads to Prosperity Bond Debt Service Fund.

§17-26A-10. Termination or dissolution.

1 Upon the termination or dissolution of the West Virginia Division of Highways, all rights
2 and properties of the West Virginia Division of Highways with respect to the Roads to Prosperity
3 Bond Debt Service Fund shall pass to and be vested in the state, subject to the rights of
4 bondholders, lienholders and other creditors.

§17-26A-11. Treasurer to determine financial advisor.

1 The Treasurer, in his or her discretion, may select a competent person or firm to serve as
2 financial advisor for the issuance and sale of general obligation bonds issued pursuant to this
3 article.

§17-26A-12. Governor to determine bond counsel.

1 The Governor shall select a competent person or firm to serve as bond counsel who shall
2 be responsible for the issuance of a final approving opinion regarding the legality of the sale of
3 general obligation bonds issued pursuant to this article. Notwithstanding the provisions of article
4 three, chapter five of this code, bond counsel may represent the state in court, render advice and
5 provide other legal services as may be requested by the Governor, the secretary or the
6 commissioner regarding any bond issuance pursuant to this article and all other matters relating
7 to the bond issue. The Governor may also, in his or her discretion, select a person or firm to serve
8 as underwriter for any issuance pursuant to this article.

§17-26A-13. Approval of and payment of all necessary expenses.

1 All necessary expenses, including legal expenses, incurred in the issuance of any general
2 obligation bonds pursuant to this article shall be paid out of the Roads to Prosperity Bond Debt
3 Service Fund or the State Road Fund if so appropriated by the Legislature. The amount of any
4 expenses incurred shall be certified to the Treasurer by the Commissioner of Highways.

§17-26A-14. Dedication of taxes and fees.

1 (a) There shall be dedicated an annual amount from the collections of the taxes and fees
2 imposed pursuant to chapters eleven, seventeen-a, seventeen-b, seventeen-c and seventeen-d

3 of this code, that are required to be deposited to the credit of the State Road Fund sufficient to
4 pay the principal and interest of any state road bonds issued pursuant to this article.
5 (b) Beginning in July in the fiscal year in which the first interest payment on the bonds
6 issued pursuant to this article is due, and monthly thereafter for the first ten months of each fiscal
7 year, there shall be deposited into the Roads to Prosperity Bond Debt Service Fund an amount
8 equal to one tenth of the projected annual principal and interest requirements, as certified by the
9 commissioner, on all bonds issued pursuant to this article, of the tax collected pursuant to chapter
10 eleven of this code: *Provided*, That each tenth payment shall be reduced by any interest earnings
11 accrued to the Roads to Prosperity Bond Debt Service Fund: *Provided, however*, That if bonds
12 issued after the annual certification have a first interest or principal payment coming due in the
13 then current or next fiscal year, the monthly deposits shall be made in such a manner to provide
14 for the payment of the interest and/or principal coming due.

NOTE: The purpose of this bill is to authorize the sale of bonds approved by the voters when they ratified the Roads to Prosperity Amendment of 2017.

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