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COMMITTEE SUBSTITUTE

FOR

H. B. 2508

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)
[BY REQUEST OF THE EXECUTIVE]

[Passed April 12, 1997; in effect from passage.]

AN ACT to amend and reenact section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-six, all relating to the sale of state road general obligation bonds; providing for the deposit of bond proceeds in the state road fund; setting forth the definitions to be used in the article; authorizing the issuance of bonds by the governor upon resolution by the Legislature; exempting interest on bonds from taxation; setting forth the amount of bonds which may be sold in each fiscal year; creating the safe road bond debt service fund and dedicating the fund for the payment of interest on bonds; setting forth the source of funds for the payment of debt service; providing for the investment of the remainder of the safe road bond debt service fund; setting forth the covenants between the state and the bondholders; setting forth impermissible conflicts of interest and providing criminal penalties for violation of the conflict of interest provisions; providing that state road bonds are lawful investments for specified entities; providing for the sale of refunding bonds and the manner of making interest payments thereon; providing for transfer of funds upon dissolution of division of highways; providing for the selection of the financial

advisor for the issuance of bonds; providing for the selection of bond counsel; providing for the selection of underwriters for the issuance of bonds; authorizing the payment of expenses from the safe road bond debt service fund; and providing for the dedication of the gasoline and special fuel excise tax to pay debt service.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twenty-six, 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
2 the proceeds of all state license taxes imposed upon
3 automobiles or other motor or steam driven vehicles; the
4 registration fees imposed upon all owners, chauffeurs,
5 operators and dealers in automobiles or other motor
6 driven vehicles; all sums of money which may be donated
7 to such fund; all proceeds derived from the sale of state
8 bonds issued pursuant to any resolution or act of the
9 Legislature carrying into effect the "Better Roads
10 Amendment" to the constitution of this state, adopted in
11 the month of November, one thousand nine hundred
12 sixty-four, except that the proceeds from the sale of these
13 bonds shall be kept in a separate and distinct account in
14 the state road fund; all proceeds from the sale of state
15 bonds issued pursuant to any resolution or act of the
16 Legislature carrying into effect the "Safe Roads
17 Amendment of 1996" to the constitution of this state,
18 adopted in the month of November, one thousand nine
19 hundred ninety-six, except that the proceeds from the sale
20 of these bonds shall be kept in a separate and distinct
21 account in the state road fund; all moneys and funds
22 appropriated to it by the Legislature; and all moneys
23 allotted or appropriated by the federal government to this
24 state for road construction and maintenance pursuant to

25 any act of the Congress of the United States; the proceeds
26 of all taxes imposed upon and collected from any person,
27 firm or corporation and of all taxes or charges imposed
28 upon and collected from any county, district or
29 municipality for the benefit of the fund; the proceeds of
30 all judgments, decrees or awards recovered and collected
31 from any person, firm or corporation for damages done
32 to, or sustained by, any of the state roads or parts thereof;
33 all moneys recovered or received by reason of the
34 violation of any contract respecting the building,
35 construction or maintenance of any state road; all
36 penalties and forfeitures imposed, recovered or received
37 by reason thereof; and any and all other moneys and
38 funds appropriated to, imposed and collected for the
39 benefit of such fund, or collected by virtue of any statute
40 and payable to such fund: *Provided*, That notwithstanding
41 any provisions of this code to the contrary, fifty cents of
42 every license fee paid pursuant to the provisions of
43 subdivision (2), subsection (a), section eight, article two,
44 chapter seventeen-b of this code shall be paid to the
45 special fund established pursuant to the provisions of
46 subsection (a), section twelve, article two, chapter three of
47 this code.

48 When any money is collected from any of the sources
49 aforesaid, it shall be paid into the state treasury by the
50 officer whose duty it is to collect and account for the
51 same, and credited to the state road fund, and shall be used
52 only for the purposes named in this chapter, which are:
53 (a) To pay the principal and interest due on all state bonds
54 issued for the benefit of said fund, and set aside and
55 appropriated for that purpose; (b) to pay the expenses of
56 the administration of the road department; and (c) to pay
57 the cost of maintenance, construction, reconstruction and
58 improvement of all state roads.

ARTICLE 26. STATE ROAD BONDS.

§17-26-1. Definitions.

1 For purposes of this article:

2 (a) "Commissioner" means the West Virginia
3 commissioner of highways continued pursuant to section

4 one, article two-a of this chapter;

5 (b) "Amendment" means the amendment to the
6 constitution of this state entitled "Safe Roads Amendment
7 of 1996" as approved by referendum in the month of
8 November, one thousand nine hundred ninety-six;

9 (c) "State road bond" means any bond or bonds
10 issued by the state pursuant to section two of this article;

11 (d) "Division" means the West Virginia division of
12 highways established under section one, article two-a, of
13 this chapter, or any successor to all or any substantial part
14 of its powers and duties; and

15 (e) "Secretary" means the secretary of the West
16 Virginia department of transportation.

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

1 Bonds of the state of West Virginia, under authority of
2 the "Safe Roads Amendment of 1996" of the par value
3 not to exceed in the aggregate five hundred fifty million
4 dollars, are hereby authorized to be issued and sold for
5 matching available federal funds for highway construction
6 and for general highway construction or improvements in
7 each of the fifty-five counties in this state, as provided for
8 by the constitution and the provisions of this article.
9 During the fiscal year ending the thirtieth day of June, one
10 thousand nine hundred ninety-eight, the amount of one
11 hundred ten million dollars in bonds may be sold. That
12 same amount is authorized to be sold in each of the next
13 four following fiscal years: *Provided*, That any amount
14 not sold in a fiscal year may be carried forward and sold
15 in the next fiscal year.

16 These bonds may be issued by the governor upon
17 resolution passed by the Legislature authorizing the same.
18 The bonds shall bear the date and mature at the time, bear
19 interest at the rate, be in amounts, be in denominations, be
20 in the registered form, carry registration privileges, be due
21 and payable at the time and place and in amounts, and
22 subject to terms of redemption as the resolution may
23 allow.

24 Both the principal and interest of the bonds shall be
25 payable in the lawful money of the United States of
26 America and the bonds and the interest thereon shall be
27 exempt from taxation by the state of West Virginia, or by
28 any county, district or municipality thereof, which fact
29 shall appear on the face of the bonds as part of the
30 contract with the holder of the bond.

31 The bonds shall be executed on behalf of the state of
32 West Virginia, by the manual or facsimile signature of the
33 state treasurer, under the great seal of the state or a
34 facsimile of the great seal, and countersigned by the
35 manual or facsimile signature of the auditor of the state.

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

1 There is hereby created a special account in the state
2 treasury, which shall be designated and known as the
3 “Safe Road Bond Debt Service Fund”, into which shall be
4 deposited any and all amounts appropriated by the
5 Legislature from the state road fund or funds from any
6 source whatsoever which is made liable by law for the
7 purpose of paying the interest on the bonds or paying off
8 and retiring bonds issued pursuant to this article.

**§17-26-4. Safe road bond debt service fund; sources used to
pay bonds and interest; investment of remainder.**

1 All funds deposited to the credit of the safe road bond
2 debt service fund shall be kept by the treasurer of the state
3 in a separate account and all money belonging to the fund
4 shall be deposited in the treasury to the credit of the fund.

5 The fund shall be applied by the treasurer of the state
6 for payments on the principal and interest on bonds sold
7 pursuant to this article as it becomes due and payable.
8 The remainder of the fund, if any, shall be invested by the
9 state board of investments in the manner authorized under
10 article six, chapter twelve of this code.

§17-26-5. Covenants of state.

1 The state of West Virginia covenants and agrees with

2 the holders of the bonds issued pursuant hereto as follows:
3 (1) That the bonds shall constitute a direct and general
4 obligation of the state of West Virginia; (2) that the full
5 faith and credit of the state is hereby pledged to secure the
6 payment of the principal and interest of the bonds; (3)
7 that an annual state tax shall be collected in an amount
8 sufficient to pay, as it may accrue, the interest on the
9 bonds and the principal thereof; and (4) that the tax shall
10 be levied in any year only to the extent that the moneys
11 transferred to the safe road bond debt service fund as
12 provided in sections three and four, of this article which
13 are irrevocably set aside and appropriated for and applied
14 to the payment of the interest on and principal of any
15 bond becoming due and payable in such year are
16 insufficient therefor.

§17-26-6. Sale by governor; minimum price; certification of annual debt service amount.

1 The governor shall sell the bonds herein authorized at
2 a time or times as provided by a resolution enacted by the
3 Legislature. The governor, in his or her discretion, may,
4 by executive message, request that a resolution be
5 proposed for the issuance of bonds pursuant to this article.
6 The governor shall determine the manner by which bonds
7 will be sold. On or before the first day of June in each
8 fiscal year the commissioner shall certify to the treasurer
9 and secretary of the department of tax and revenue the
10 principal and interest requirement for the following fiscal
11 year on any bonds issued pursuant to this article.

§17-26-7. Conflicts of interest.

1 No part of the proceeds from the sale of bonds under
2 this article may inure to the benefit of or be distributable
3 to the officers, employees of the state except to pay
4 reasonable compensation for services rendered to the state.
5 Any person violating the provisions of this section shall be
6 guilty of a misdemeanor and, upon conviction thereof,
7 shall be fined not more than one thousand dollars, or
8 confined in jail ^{NOT} ~~not~~ more than one year, or both fined and
9 imprisoned.

*add
b7m by*

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

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

§17-26-9. Refunding bonds.

1 Any state road general obligation bonds which are
2 outstanding may at any time be refunded by the issuance
3 of refunding bonds in an amount deemed necessary to
4 refund the principal of the bonds to be refunded, together
5 with any unpaid interest thereon; to accomplish the
6 purpose of the amendment and to pay any premiums and
7 commissions necessary to be paid in connection therewith.
8 Any refunding may be effected whether the state road
9 general obligation bonds to be refunded shall have then
10 matured or shall thereafter mature. Any refunding bonds
11 issued pursuant to this article shall be payable from the
12 safe road bond debt service fund.

§17-26-10. Termination or dissolution.

1 Upon the termination or dissolution of the West
2 Virginia division of highways, all rights and properties of
3 the West Virginia division of highways with respect to the
4 safe road bond debt service fund shall pass to and be
5 vested in the state, subject to the rights of bondholders,
6 lienholders and other creditors.

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

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

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

1 The governor shall select a competent person or firm
2 to serve as bond counsel who shall be responsible for the
3 issuance of a final approving opinion regarding the
4 legality of the sale of general obligation bonds issued
5 pursuant to this article. Notwithstanding the provisions of

6 article three, chapter five of this code, bond counsel may
7 represent the state in court, render advice and provide
8 other legal services as may be requested by the governor,
9 the secretary or the commissioner regarding any bond
10 issuance pursuant to this article and all other matters
11 relating to the bond issue. The governor may also, in his
12 or her discretion, select a person or firm to serve as
13 underwriter for any issuance pursuant to this article.

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

1 All necessary expenses, including legal expenses,
2 incurred in the issuance of any general obligation bonds
3 pursuant to this article shall be paid out of the safe road
4 bond debt service fund. The amount of any expenses
5 incurred shall be certified to the commissioner of
6 highways.

§17-26-14. Dedication of tax.

1 (a) There shall be dedicated an annual amount from
2 the collections of the tax imposed pursuant to section
3 three, article fourteen, chapter eleven of this code,
4 sufficient to pay the principal and interest of any state
5 road bonds issued pursuant to this article.

6 (b) Beginning in the month of July, in the fiscal year
7 in which bonds are first issued, and monthly thereafter,
8 there shall be deposited into the safe road bond debt
9 service fund an amount equal to one tenth of the projected
10 annual principal, interest requirements, as certified by the
11 commissioner, on all bonds issued pursuant to this article,
12 of the tax collected pursuant to article fourteen, chapter
13 eleven of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Spencer
Chairman Senate Committee

Nick Fantasia
Chairman House Committee

Originating in the House.

Takes effect from passage.

Darrell G. Holmes
Clerk of the Senate

Dugan M. Gray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *May*, 1997.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

Date 4/25/97

Time 2:07 pm