

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 258**

4 (By Senators Beach, Williams, Prezioso and Kessler)

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6 [Originating in the Committee on Transportation and Infrastructure;  
7 reported January 28, 2015.]

8 **FISCAL  
NOTE**

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
12 designated §7-26-1, §7-26-2, §7-26-3, §7-26-4, §7-26-5, §7-26-6, §7-26-7, §7-26-8, §7-26-9,  
13 §7-26-10, §7-26-11, §7-26-12, §7-26-13, §7-26-14, §7-26-15, §7-26-16, §7-26-17, §7-26-18,  
14 §7-26-19, §7-26-20, §7-26-21, §7-26-22, §7-26-23, §7-26-24, §7-26-25, §7-26-26, §7-26-27,  
15 §7-26-28, §7-26-29, §7-26-30, §7-26-31, §7-26-32, §7-26-33, §7-26-34, §7-26-35, §7-26-36,  
16 §7-26-37, §7-26-38, §7-26-39, §7-26-40, §7-26-41, §7-26-42, §7-26-43, §7-26-44 and  
17 §7-26-45, all relating generally to the role of county commissions and Commissioner of  
18 Highways in construction and financing of road and bridge projects in counties; providing  
19 short title, legislative purpose and findings; defining terms; authorizing county commissions  
20 to develop road construction project plans; specifying process for development and approval  
21 of road construction project plans and plan amendments; allowing joint road construction  
22 project plans; requiring county commissions to submit road construction project plans and

1 plan amendments to Commissioner of Highways for approval; specifying contents of  
2 application and approval process; creating new account and subaccounts in State Road Fund;  
3 allowing road construction projects to be financed on cash basis or by special revenue bonds  
4 issued by Commissioner of Highways; giving Commissioner of Highways jurisdiction over  
5 all road construction projects accepted into state road system; specifying that road  
6 construction projects are public improvements; requiring annual reporting by Commissioner  
7 of Highways on county road construction projects; providing procedures and requirements  
8 for issuance of special revenue bonds and refunding bonds for county road construction  
9 projects; providing that bonds are not debts of state, county or any political subdivisions, are  
10 negotiable instruments and are exempt from taxation; specifying that persons executing  
11 bonds have no personal liability; providing that powers relating to road construction project  
12 plans, construction of projects and issuance of special revenue bonds are additional powers;  
13 allowing county commissions with approved road construction projects to impose county  
14 transportation sales and use taxes; limiting rate of taxes; requiring transactions and uses  
15 subject or exempt from county sales and use taxes to conform to state consumers sales and  
16 service tax and use tax requirements except that county tax may not apply to sales of motor  
17 vehicles, motor fuels or to purchases where local taxation is prohibited by federal law;  
18 requiring Tax Commissioner to administer, collect and enforce county transportation sales  
19 and use tax and, for that purpose, specifying a fee allowed for commissioner's services;  
20 making county transportation sales and use taxes subject to West Virginia Tax Procedure and  
21 Administration Act and to West Virginia Tax Crimes and Penalties Act; requiring that  
22 definitions, taxable transactions and exemptions from county transportation sales and use

1 taxes automatically update when state consumers sales and service tax and use tax laws are  
2 amended; requiring county commissions to develop and maintain county rate and boundary  
3 databases; requiring county commission to notify Tax Commissioner if tax has been imposed  
4 or tax rate has changed; specifying when collection of county transportation sales and use  
5 taxes begins; requiring that net collection of county transportation sales and use taxes be  
6 deposited in subaccount of county in county road improvement account in the State Road  
7 Fund; providing that all powers are supplemental; exempting public officers from personal  
8 liability; providing for severability; providing criminal penalties; and providing  
9 Commissioner of Highways with authority to propose rules for legislative approval.

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

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

18 **ARTICLE 26. LETTING OUR COUNTIES ACT LOCALLY ACT.**

19 **PART I. GENERAL.**

20 **§7-26-1. Short title.**

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

22 **§7-26-2. Purpose and findings.**

1 (a) The purpose of this article is to provide county commissions with a source of funding to  
2 finance: (1) The accelerated construction of new roads and bridges in their respective counties; and  
3 (2) the accelerated upgrading or modernizing of existing state roads and bridges in their counties,  
4 by allowing them to impose transportation sales and use taxes as provided in this article.

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

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

7 (A) Thirty-eight thousand six hundred eighty-four miles of public roads (2012 Public  
8 Certified Mileage);

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

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

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

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

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

17 (G) One all American road;

18 (H) Five national byways;

19 (I) Fourteen state byways; and

20 (J) Eight backways.

21 (2) A 2012 road needs assessment prepared for Governor Tomblin's Blue Ribbon  
22 Commission by Wilbur Smith Associates reveals that during the next seventeen years:

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

2 (B) Ten thousand four hundred one lane miles will need modernization improvements

3 including lane widening, road reconstruction, and shoulder improvements;

4 (C) Three thousand four hundred two lane miles will need to be constructed;

5 (3) The needs assessment concluded that over a twenty-five year period:

6 (A) Eight hundred fourteen bridges will need to be replaced;

7 (B) Five hundred seventy-seven bridges will need to be widened;

8 (C) Eight bridges will need to be straightened; and

9 (D) One bridge will need to be raised.

10 (4) The needs assessment projected the funding gap for road construction and maintenance

11 over the next twenty-five years was estimated to be \$36.7 billion, excluding new road construction;

12 and

13 (5) The needs assessment also projected that the funding gap for bridges construction and

14 maintenance was \$2.4 billion, excluding new bridge construction.

15 (6) Modern, safe roads are critical to economic development;

16 (7) Modern, safe roads and bridges are essential to the growth of our communities and to the

17 public health, welfare and safety;

18 (8) Counties need greater ability to influence when and where new roads are constructed and

19 existing roads and bridges are modernized or upgraded; and

20 (9) Significant ways to provide county commissions with the opportunity to influence when

21 and where roads and bridges are constructed, reconstructed, replaced, modernized or upgraded

22 include the ability to recommend to the Division of Highways road and bridge construction projects

1 and to assist in the financing of those projects.

2 **§7-26-3. Definitions.**

3 For purposes of this article:

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

8 (2) "Categories of road construction projects" include and are limited to preservation  
9 projects, modernization projects and expansion projects.

10 (A) "Preservation projects" are road and bridge construction projects that take care of what  
11 is already in place and include, but are not limited to, pavement rehabilitation and reconstruction,  
12 and bridge repairs and replacements.

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

16 (C) "Expansion projects" are road and bridge construction projects that add to the existing  
17 road system and include, but are not limited to, new roads, new bridges, new lanes and new  
18 interchanges.

19 (3) "Commissioner of Highways" means the chief executive officer of the Division of  
20 Highway of the Department of Transportation provided in section one, article two-a, chapter  
21 seventeen of this code, or his or her delegate. The term "delegate" in the phrase "or his or her  
22 delegate", when used in reference to the Commissioner of Highways, means any officer or employee

1 of the Division of Highways duly authorized by the commissioner directly, or indirectly by one or  
2 more redelegations of authority, to perform the functions mentioned or described in this article or  
3 rules promulgated for this article.

4 (4) "Computer software" means "computer software" as defined in section two, article  
5 fifteen-b, chapter eleven of this code.

6 (5) "Consumer" means any person purchasing tangible personal property, custom software  
7 or a taxable service from a retailer as defined in subdivision (17) of this section or from a seller as  
8 defined in section two, article fifteen-b, chapter eleven of this code.

9 (6) "County commission" means the governing body of a county of this state.

10 (7) "County transportation sales tax" means the transportation sales and service tax imposed  
11 by a county commission pursuant to this article.

12 (8) "County transportation sales and use taxes" means the county transportation sales tax and  
13 the county transportation use tax imposed by a county commission pursuant to this article.

14 (9) "County transportation use tax" means the transportation use tax imposed by a county  
15 commission pursuant to this article.

16 (10) "Custom software" means software prepared for a particular customer to meet the  
17 specific needs or circumstances of the customer.

18 (11) "Highway authority" or "highway association" means any entity created by the  
19 Legislature for the advancement and improvement of the state road and highway system, including,  
20 but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway Association,  
21 Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields Expressway  
22 Authority, Robert C. Byrd Corridor H Highway Authority, West Virginia 2 and I-68 Authority, Little

1 Kanawha River Parkway Authority, King Coal Highway Authority, Coal Heritage Highway  
2 Authority, Blue and Gray Intermodal Highway Authority and the West Virginia Eastern Panhandle  
3 Transportation Authority or, if an authority is abolished, any entity succeeding to the principal  
4 functions of the highway authority or to whom the powers given to the highway authority are given  
5 by law.

6 (12) "Lease" means "lease" as defined in section two, article fifteen-b, chapter eleven of this  
7 code;

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

13 (14) "Project costs" means capital costs, costs of financing, planning, designing, constructing,  
14 expanding, improving, or maintaining a road, the cost of land, equipment, machinery, installation  
15 of utilities and other similar expenditures and all other charges or expenses necessary, appurtenant  
16 or incidental to the foregoing.

17 (15) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any  
18 manner or by any means whatsoever, for a consideration.

19 (16) "Purchase price" means "purchase price" as defined in section two, article fifteen-b,  
20 chapter eleven of this code;

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

1           (18) "Retailer" means and includes every person engaging in the business of selling, leasing  
2 or renting tangible personal property or custom software or furnishing a taxable service for use  
3 within the meaning of this article, or in the business of selling, at auction, tangible personal property  
4 or custom software owned by the person or others for use in the county imposing taxes pursuant to  
5 this article. However, when, in the opinion of the Tax Commissioner, it is necessary for the efficient  
6 administration of county uses taxes imposed pursuant to this article to regard any salespersons,  
7 representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors,  
8 employees or persons under whom they operate or from whom they obtain the tangible personal  
9 property sold by them, irrespective of whether they are making sales on their own behalf or on behalf  
10 of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard  
11 them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for  
12 purposes of county use taxes.

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

15           (A) Any retailer having or maintaining, occupying or using, within the county, directly or by  
16 a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any  
17 agent (by whatever name called) operating within the county under the authority of the retailer or its  
18 subsidiary, irrespective of whether the place of business or agent is located in the county permanently  
19 or temporarily, or whether the retailer or subsidiary is admitted to do business within this state  
20 pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e  
21 of this code; or

22           (B) Any retailer that is related to, or part of a unitary business with, a person, entity or

1 business that, without regard to whether the retailer is admitted to do business in this state pursuant  
2 to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this  
3 code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a  
4 related member or part of a unitary business, all as defined in section three-a, article twenty four,  
5 chapter eleven of this code, that:

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

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

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

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

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

1 Internet-based business from a location within the county imposing the use tax, or any other service.

2 (20) "Retail sale" or "sale at retail" mean “retail sale” and “sales at retail” as defined in  
3 section two, article fifteen-b, chapter eleven of this code.

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

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

10 (23) “Road construction project” means and includes any road construction project included  
11 in a road construction project plan that is adopted by a county commission pursuant to this article  
12 and approved by the Commissioner of Highways as provided in this article.

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

15 (25) "Sales price" means “sales price” as defined in section two, article fifteen-b, chapter  
16 eleven of this code.

17 (26) “Sales tax” means the transportation sales and service tax imposed by a county  
18 commission pursuant to this article on sales of tangible personal property or custom software and  
19 on the furnishing of taxable services.

20 (27) "Seller" means “seller” as defined in section two, article fifteen-b, chapter eleven of this  
21 code.

22 (28) "Service" or "selected service" mean “service” or “selected service” as defined in section

1 two, article fifteen-b, chapter eleven of this code.

2 (29) “Tangible personal property” means “tangible personal property as defined in section  
3 two, article fifteen-b, chapter eleven of this code.

4 (30) “Tax” means a transportation sales or a transportation use tax imposed by a county  
5 commission pursuant to this article and includes additions to tax, interest and penalties levied under  
6 article ten, chapter eleven of this code.

7 (31) "Tax Commissioner" means the State Tax Commissioner provided in article one,  
8 chapter eleven or this code or his or her delegate. The term "delegate" in the phrase "or his or her  
9 delegate", when used in reference to the Tax Commissioner, means any officer or employee of the  
10 State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more  
11 redelegations of authority, to perform the functions mentioned or described in this article or rules  
12 promulgated for this article.

13 (32) "Taxpayer" means “taxpayer” as defined in section two, article fifteen-b, chapter eleven  
14 of this code, who is subject to a transportation sales tax or a transportation use tax imposed by a  
15 county commission pursuant to this article, whether acting for himself or herself or as a fiduciary,  
16 and who is liable for payment of any additions to tax, penalties or interest imposed by article ten,  
17 chapter eleven of this code for failure to timely pay or remit transportation sales taxes or  
18 transportation use taxes imposed by a county commission pursuant to this article.

19 (33) "The code” or “this code" means the Code of West Virginia, 1931, as amended by the  
20 Legislature.

21 (34) “This state” means the State of West Virginia.

22 (35) “Use tax” means the county transportation use tax imposed by a county commission

1 pursuant to this article on the use in the county of tangible personal property, custom software or the  
2 results of a taxable service upon which the county transportation sales and service tax was not paid.

3 (36)“Vendor” means any person furnishing services subject to a county’s sales and use taxes  
4 imposed pursuant to this article, or making sales of tangible personal property or custom software  
5 subject to a county’s sales and use taxes imposed pursuant to this article. The terms "vendor,"  
6 “retailer” and "seller" are used interchangeably in this article.

7 PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

8 **§7-26-4. Creation of county road construction project plan.**

9 County commissions, upon their own initiative or upon application of: (1) A highway  
10 authority; (2) a local, county or regional economic development authority; or (3) any resident of the  
11 county, may propose creation of a road construction project plan for the county, or propose an  
12 amendment to an existing road construction project plan of the county.

13 **§7-26-5. Public hearing required.**

14 (a) *General.* – After the proposed road construction project plan, or proposed project plan  
15 amendment, is drafted, the county commission shall hold one or more public hearings at which  
16 interested persons may express their views on the county’s proposed road construction project plan,  
17 or the proposed amendment to an existing road construction project plan.

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

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

22 (2) A description of each road construction project included in the proposed road construction

1 project plan, or the proposed amendment to an existing project plan, in sufficient detail to give the  
2 public notice of the contents of the proposed project plan, or the proposed amendment to an existing  
3 project plan, to cause residents of the county and other interested persons to examine the proposed  
4 road construction project plan, or the proposed amendment to an existing project plan, and attend  
5 the public hearing or submit written comments should they so choose;

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

9 (4) Explain whether one or more projects in the proposed road construction project plan, or  
10 in the proposed amendment to an existing project plan, will be financed, in whole or in part, by  
11 county transportation sales and use taxes and the proposed rate of tax.

12 (c) *Notice by mail.* – On or before the first day of publication of the public notice, a copy of  
13 the notice shall be sent by first-class mail to the Commissioner of Highways, the Director of the  
14 West Virginia Development Office and to the mayor of each municipality located within the county.  
15 Additionally, when the county commission reasonably anticipates that a proposed road construction  
16 project may affect a bordering county, a copy of the notice shall also be sent by first-class mail to  
17 the president of the county commission of the bordering county or counties.

18 (d) *Opportunity to be heard.* – All persons who appear at the public hearing shall be afforded  
19 a reasonable opportunity to express their views on all or any part of the proposed road construction  
20 project plan, or the proposed amendment to an existing project plan.

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

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

3 (f) *Recording of public hearing.* – Each public hearing shall be recorded by a court reporter,  
4 or be digitally recorded.

5 **§7-26-6. Finalization of project plan, or amendment.**

6 (a) *Resolution of county commission.* – After both the public hearing and the public comment  
7 period closes, and after receipt of any required resolution of the governing body of a municipality  
8 as provided in subsection (b) of this section, the county commission may, by resolution, finalize its  
9 roads construction project plan, or its proposed amendment to an existing road construction project  
10 plan and, after prioritizing each project, adopt a resolution authorizing submit of an application for  
11 the road construction project plan, or for the amendment to an existing project plan, as finalized, to  
12 the Commissioner of Highways for his or her review and approval, as provided in section eleven of  
13 this article.

14 (b) *Consent of municipality in which project located.* – No county commission may adopt  
15 a resolution approving a road construction project plan, or an amendment to a previously approved  
16 project plan, any portion of which is located within the boundaries of a Class I, II, III or IV  
17 municipality, without the adoption of a resolution by the governing body of that municipality  
18 consenting to the road construction project.

19 **§7-26-7. Order adopting road construction project plan or plan amendment.**

20 (a) A road construction project plan, or an amendment to an existing project plan, may not  
21 be adopted by order of the county commission until after the project plan, or the plan amendment,  
22 has been approved by the Commissioner of Highways.

1 (b) Upon approval of a road construction project plan, or a plan amendment, by the  
2 Commissioner of Highways, the county commission may enter an order that:

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

6 (2) Assigns a name to the road construction project for identification purposes, which name  
7 shall be the name given to the project by the Commissioner of Highways should the commissioner  
8 assign a name to the project.

9 (A) The name may include a geographic or other designation; and

10 (B) In addition to the project name, the project shall be assigned a project number that begins  
11 with the federal information processing code number (FIPS code number) for the county followed  
12 by a hyphen and a consecutive number beginning with the number "01". Each additional road  
13 construction project in the county approved by the Commissioner of Highways shall be assigned the  
14 next consecutive number.

15 (3) Establish a county transportation sales tax and a county transportation use tax as provided  
16 in this article at rates not to exceed one percent. However, the rate of the sales tax and the rate of  
17 the use tax shall at all times be identical.

18 **§7-26-8. Amendment of road construction project plan.**

19 (a) *General.* – A road construction project plan adopted by order of the county commission  
20 may be amended by the county commission at any time to add one or more projects, or delete one  
21 or more project, or redesignate the order in which projects are to be completed as funds become  
22 available: *Provided*, That once a particular road construction project has been approved by the

1 Commissioner of Highways and an intergovernmental agreement is executed as provided in this  
2 article for that project, the project may not be revised by the county commission without the express  
3 written approval of the Commissioner of Highways.

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

7 **§7-26-9. Joint road construction projects.**

8 (a) The Legislature hereby finds and declares that the citizens of the state would benefit from  
9 coordinated road construction efforts by county commissions that impose transportation sales and  
10 use taxes pursuant to this article.

11 (b) Notwithstanding any other section of this code to the contrary, any two or more county  
12 commissions may contract to share expenses for and to share transportation sales and use tax  
13 revenues, on a pro rata basis, to facilitate construction of road construction projects within their  
14 respective counties.

15 (c) When a road construction project begins in one county and ends in one or more other  
16 counties of this state, the county commission of each county may, by resolution, adopt a written  
17 intergovernmental agreement with each county and the Commissioner of Highways regarding the  
18 proposed multi-county road construction project.

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

22 (e) No withdrawing county commission shall be entitled to the return of any money or

1 property advanced to the road construction project.

2 (f) Notwithstanding any provision of this code to the contrary, any county commission  
3 imposing transportation sales and use taxes pursuant to this article may agree with one or more other  
4 counties that also impose transportation sales and use taxes pursuant to this article that have an  
5 interest in completion of a proposed road construction project, may enter into an intergovernmental  
6 agreement with respect to the pooling of transportation sales and use tax revenues to finance  
7 construction of the road construction project either on a cash basis or to pay debt service on revenue  
8 bonds issued by the Commissioner of Highways to fund the road construction project.

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

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

16 (i) The Commissioner of Highways is authorized to enter into intergovernmental agreements  
17 with county commissions or other political subdivisions of the state, or with the federal government  
18 or any agency thereof, respecting the financing, planning, and construction of roads and bridges  
19 constructed pursuant to this article.

20 **§7-26-10. Termination of road construction project plan.**

21 (a) *General.* – No road construction project plan may be in existence for a period longer than  
22 thirty years, except as otherwise provided in this section, and no revenue bonds secured by

1 collections of the taxes imposed by a county commission pursuant to this article may have a final  
2 maturity date of more than thirty years after date of issuance of the revenue bonds.

3 (b) *Extension of plan.* – Each amendment of a county’s roads construction project plan  
4 approved by the Commissioner of Highways that results in execution of an intergovernmental  
5 agreement by the county commission and the Commissioner of Highways shall extend the term of  
6 the project plan for another thirty years beginning with the day the last party to sign signs that  
7 intergovernmental agreement.

8 (c) *Termination of transportation sales and use taxes.* – The transportation sales and use  
9 taxes imposed by a county commission pursuant to this article to finance, in whole or in part, the  
10 county’s road construction project plan shall expire on the first day of the calendar quarter that  
11 begins one hundred twenty days after the later of: (1) The day the county commission notifies the  
12 Tax Commissioner in writing that its road construction projects financed, in whole or in part, with  
13 transportation sales and use tax revenue have been completed; or (2) the Commissioner of Highways  
14 certifies to the county commission and to the Tax Commissioner that all principal and interest due,  
15 or to become due, on special revenue bonds issued under this article to finance the road construction  
16 project or projects has been paid or is provided for.

17 (d) *Shorter period.* – The county commission creating the road construction project plan  
18 financed, in whole or in part, by transportation sales and use tax revenues may set a shorter period  
19 for the existence of the taxes. However, in this event, no revenue bonds may have a final maturity  
20 date later than the termination date of the county’s transportation sales and use taxes imposed  
21 pursuant to this article.

22 (e) *Termination order.* – Prior to expiration of the county’s transportation sales and use taxes,

1 the county commission shall adopt an order terminating the transportation sales and use taxes  
2 imposed pursuant to this article on the date specified. However, the termination shall not extinguish  
3 any person's liability for payment of transportation sales and use taxes that arose prior to termination  
4 of the taxes regardless of whether the taxes were assessed or not assessed prior to the termination  
5 date, and as to those taxes, the rights and duties of the taxpayer and of the State of West Virginia  
6 shall be fully and completely preserved.

7 (f) *Prohibition on termination or rate reduction.* – The county commission may not repeal  
8 the order imposing transportation sales and use taxes pursuant to this article, or reduce the rates at  
9 which the taxes are imposed, so long as any revenue bonds secured by the taxes remain outstanding,  
10 unless payment of the bonds has been secured.

11 PART III. COMMISSIONER OF HIGHWAYS.

12 **§7-26-11. Application to Commissioner of Highways for approval of road construction**  
13 **project plans.**

14 The Commissioner of Highways, within sixty days after receipt of the county commission's  
15 proposed road construction project plan, or an amendment to a previously approved project plan,  
16 shall: (1) Approve the plan as submitted, in whole or in part; (2) reject the plan as submitted in  
17 whole or in part; or (3) return the plan to the county commission for further development or review  
18 in accordance with instructions of the Commissioner of Highways. The decision of the  
19 commissioner is final and is not subject to judicial review.

20 **§7-26-12. Contents of application.**

21 Each application submitted under section eleven of this article shall include:

22 (1) A true copy of the county's proposed road construction project plan, or proposed

1 amendment to a project plan previously approved by the Commissioner of Highways, that is adopted,  
2 after the public hearing, by resolution of the county commission.

3 (2) A true copy of the resolution adopted by the county commission approving submission  
4 of the adopted road construction project plan, or the proposed amendment to a project plan  
5 previously by the Commissioner of Highways, to the Commissioner of Highways for approval.

6 (3) A true copy of the notice of public hearing or hearings on the county's proposed road  
7 construction plan, or proposed amendment to a previously adopted project plan, and a true copy of  
8 the proposed plan, or the proposed amendment to an existing project plan that was the subject of the  
9 public hearing.

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

12 (5) A true copy of the transcript of the public hearing or hearings, or a true copy of the digital  
13 recording of the public hearing or hearings, including true copies of any written comments received  
14 by the commission on the proposed road construction project plan, or the proposed amendment to  
15 an existing project plan.

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

18 (A) Type of project, as:

19 (i) Road project;

20 (ii) Bridge project; or

21 (iii) Road and bridge project.

22 (B) Location of the project.

- 1 (C) Length of the project (in miles or feet).
- 2 (D) Scope of the work.
- 3 (E) Classification of the project as:
- 4 (i) Preservation project;
- 5 (ii) Modernization projects; or
- 6 (iii) Expansion project.
- 7 (F) Estimated cost of the project.
- 8 (G) Method of financing the project.
- 9 (H) Time line for completion of the project.
- 10 (7) A map of the county showing the geographic location of each road construction project  
11 included in the county's road construction project plan.
- 12 (8) When the road construction project is located, in whole or in part, within the corporate  
13 limits of any municipality, a true copy of the resolution adopted by the governing body of the  
14 municipality consenting to the road construction project.
- 15 (9) Identification of any businesses or residents that the county commission anticipates will  
16 be displaced or leave because of the road construction project;
- 17 (10) A good faith estimate of the annual net county transportation sales and use tax  
18 collections to be deposited in the county's sub-account in County Road Improvement Account in the  
19 State Road Fund that will be available to finance the project, in whole or in part; and
- 20 (11) Any additional information the Commissioner of Highways may reasonably require to  
21 analyze a proposed road construction project.
- 22 (b) *Review of applications.* -- The Commissioner of Highways shall review all proposed road

1 construction project plans for conformance to statutory and regulatory requirements, the  
2 reasonableness of the project's budget and timetable for completion using the following criteria:

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

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

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

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

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

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

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

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

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

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

3 (c) *Additional criteria.* -- The Commissioner of Highways may establish by rule additional  
4 criteria for use when evaluating applications and approving or denying the application, in whole or  
5 in part.

6 (d) *Certification of road construction project.* – When the Commissioner of Highways  
7 approves a county's road construction project application, in whole or in part, the commissioner shall  
8 issue to the county commission a written certificate evidencing approval of each approved project.

9 (e) *Rules.* – The Commissioner of Highways may propose rules for legislative approval in  
10 accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the  
11 county road construction project application approval process and to further describe the criteria and  
12 procedures it has established in connection therewith.

13 **§7-26-13. Creation of County Road Improvement Account in State Road Fund.**

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

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

21 (c) *Additional funds.* – In addition to the county transportation sales and use taxes levied and  
22 collected as provided in this article, funds paid into the account for the credit of any subaccount may

1 also be derived from the following sources:

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

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

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

6 (d) *Expenditures from account.* – The Commissioner of Highways may withdraw funds from  
7 a county’s subaccount only in accordance with one or more intergovernmental agreement or  
8 contracts executed by the county commission of that county.

9 **§7-26-14. Cash basis projects; issuance of road construction special revenue bonds by**  
10 **Commissioner of Highways.**

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

16 (b) *Special revenue bonds.* – Additionally, the county commission may by intergovernmental  
17 written agreement authorize the Commissioner of Highways to issue, in the manner prescribed by  
18 this article, special revenue bonds secured by county transportation sales and use taxes imposed  
19 pursuant to this article to finance or refinance all or part of a road construction project in the county  
20 and pledge all or any part of the county transportation sales and use taxes for the payment of the  
21 principal of and interest on such bonds and the reserves therefor.

22 **§7-26-15. Commissioner's authority over road construction projects accepted into the state**

1                    **road system; use of state road funds.**

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

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

11 **§7-26-16. Qualifying a transportation project as a public improvement.**

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

15 **§7-26-17. Reports by Commissioner of Highways.**

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

21            (1) The identification, by county, of each road construction project for which an  
22 intergovernmental agreement has been executed pursuant to this article, and the status of the road

1 construction project as of June 30 preceding the due date of the report;

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

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

4 (4) If revenue bonds have been issued by the Commissioner of Highways, the amount of the  
5 bonds issued that are outstanding as of June 30 preceding the due date of the report for each project  
6 included in the report;

7 (5) The balance as of the June 30 preceding the due date of the report of each county's  
8 subaccount in the County Improvement Account in the State Road Fund.

9 (6) The amount of transportation sales and use taxes deposited into each county's subaccount  
10 in the County Road Improvement Account in the State Road Fund during the fiscal year ending June  
11 30 preceding the due date of the commissioner's report.

12 (7) The amount the Commissioner of Highways withdrew from each county's subaccount in  
13 the County Road Improvement Account in the State Road Fund during the fiscal year ending June  
14 30 preceding the due date of the report to pay debt service on revenue bonds issued pursuant to this  
15 article or to construct projects financed on a pay-as-you-go basis.

16 PART IV. COUNTY ROAD CONSTRUCTION SPECIAL REVENUE BONDS.

17 **§7-26-18. Issuance of county road construction special revenue bonds.**

18 Special revenue bonds may be issued by the Division of Highways pursuant to an  
19 intergovernmental written agreement with the county commission to finance or refinance, in whole  
20 or in part, road construction projects in an aggregate principal amount not exceeding the amount  
21 which the county commission(s) and the Commissioner of Highways mutually agree can be paid as  
22 to both principal and interest and reasonable margins for a reserve, if any, therefor from county

1 transportation sales and use tax collections. In the discretion of the Commissioner of Highways,  
2 special revenue bonds issued pursuant to this article may be issued for road construction projects in  
3 two or more counties.

4 (1) The Commissioner of Highways issuing road construction special revenue bonds pursuant  
5 to this article shall establish a fund to deposit county transportation sales and use tax collections to  
6 pay debt service on the bonds.

7 (2) The Commissioner of Highways shall thereafter transfer from the county's subaccount  
8 all transportation sales and use tax revenues pledged to the payment of principal and interest of the  
9 road construction special revenue bonds into the fund established under subdivision (1) of this  
10 section.

11 (3) The road construction special revenue bonds shall be authorized to be issued by the  
12 Commissioner of Highways pursuant to the provisions of this article, and shall be secured, shall bear  
13 such date and shall mature at such time, not exceeding thirty years from the date of issue, shall bear  
14 interest at such rate or rates, including variable rates, be in such denominations, be in such form,  
15 carry such registration privileges, be payable in such medium of payment and at such place or places  
16 and such time or times and be subject to such terms of redemption as the Commissioner of Highways  
17 may authorize. Road construction special revenue bonds may be sold by the Division of Highways,  
18 at public or private sale, at or not less than the price the Commissioner of Highways determines. The  
19 road construction special revenue bonds shall be executed by manual or facsimile signature by the  
20 Commissioner of Highways. In case any Commissioner of Highways whose signature, or a facsimile  
21 of whose signature, appears on any bond ceases to be the Commission of Highways before delivery  
22 of such bonds, such signature or facsimile is nevertheless sufficient for all purposes the same as if

1 he or she had remained in office until such deliver.

2 **§7-26-19. Trustee for bondholders; contents of trust agreement; pledge or assignment of**  
3 **revenues and funds.**

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

13 **§7-26-20. Refunding bonds.**

14 Any bonds issued by the Division of Highways pursuant to the provisions of this article or  
15 any other provision of this code and at any time outstanding may at any time and from time to time  
16 be refunded by the Division of Highways by the issuance of its refunding bonds in such amount as  
17 it may deem necessary to refund the principal of the bonds so to be refunded, together with any  
18 unpaid interest thereon, to provide additional funds approved project costs and to pay any premiums  
19 and commissions necessary to be paid in connection therewith. Any such refunding may be effected  
20 by whether the bonds to be refunded have then matured or thereafter mature, either by sale of the  
21 refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be  
22 refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby.

1 Refunding bonds shall be issued in conformance with the provisions of this article related to issuance  
2 of bonds.

3 **§7-26-21. Obligations of Commissioner of Highways undertaken pursuant to this article not**  
4 **debt of state, county, municipality or any political subdivision.**

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

15 (b) All such bonds, and all documents evidencing any other obligation, shall contain on the  
16 face thereof a statement to the effect that the bonds or such other obligation as to both principal and  
17 interest are not debts of the state or any county, municipality or political subdivision thereof, but are  
18 payable solely from revenues and funds pledged for their payment as authorized by this article.

19 **§7-26-22. Negotiability of bonds issued pursuant to this article.**

20 Whether or not the bonds issued pursuant to this article are of such form or character as to  
21 be negotiable instruments under the Uniform Commercial Code, such bonds are negotiable  
22 instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject

1 only to the provisions of the bonds for registration.

2 **§7-26-23. Exemption from taxation.**

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

6 **§7-26-24. Personal liability; persons executing bonds issued pursuant to this article.**

7 Neither the Commissioner of Highways, nor any officer or employee of the Division of  
8 Highways or the Department of Transportation, or any person executing the bonds issued pursuant  
9 to the provisions of this article, are liable personally on such bonds or subject to any personal  
10 liability or accountability by reason of the issuance thereof.

11 **§7-26-25. Cumulative authority as to powers conferred; applicability of other statutes and**  
12 **charters; bonds issued pursuant to this article.**

13 The provisions of this article relating to the issuance of bonds shall be construed as granting  
14 cumulative authority for the exercise of the various powers herein conferred, and neither the powers  
15 nor any bonds issued hereunder are affected or limited by any other statutory or charter provision  
16 now or hereafter in force, other than as may be provided in this article, it being the purpose and  
17 intention of this article to create full, separate and complete additional powers. The various powers  
18 conferred herein may be exercised independently and notwithstanding that no bonds are issued  
19 hereunder.

20 **PART V. TRANSPORTATION SALES AND USE TAXES.**

21 **§7-26-26. Criteria and requirements necessary to impose county transportation sales and use**  
22 **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 more  
4 road construction project in the county, in whole or in part, using collections of the county's  
5 transportation sales and use taxes deposited in the county's subaccount in the County Road  
6 Improvement Account in the State Road Fund.

7 **§7-26-27. Counties authorized to impose transportation sales and use taxes.**

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

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

16 (c) *Sales tax base.* – In general, the tax base of county transportation sales tax imposed  
17 pursuant to this article shall be identical to the consumers sales and service tax base of this state,  
18 except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code shall not  
19 apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the  
20 county sales tax may not apply as provided in subsection (e) of this section.

21 (d) *Use tax base.* – In general, the tax base of a county transportation use tax imposed  
22 pursuant to this article shall be identical to the use tax base of this state unless otherwise prohibited

1 by federal law and except as provided in subsection (e) of this section. When the tax imposed by  
2 article fifteen, chapter eleven of this code was paid to the vendor at the time of purchase but the  
3 county's sales tax was not paid because the vendor is located in this state but not in the county  
4 imposing use tax pursuant to this article, the purchaser who uses the tangible personal property,  
5 custom software or results of the taxable service in the county shall owe the use tax imposed by that  
6 county unless taxation is otherwise prohibited by federal law or prohibited by subsection (e) of this  
7 section.

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

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

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

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

15 (4) Any use of tangible personal property, custom software or the results of a taxable service  
16 that is exempt from the tax imposed by article fifteen-a, chapter eleven of this code, except that this  
17 exception shall not apply to any use within the county when the state consumers sales and service  
18 tax imposed by article fifteen, chapter eleven of this code, was paid to the seller at the time of  
19 purchase but the county's transportation sales tax was not paid to the seller.

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

22 (f) Whenever tangible personal property, custom software, or a taxable service are purchased

1 in a county of this state that does not impose county transportation sales and use taxes pursuant to  
2 this article and the tangible personal property, custom software or results of a taxable service are  
3 used in a county that does impose county transportation sales and use taxes pursuant to this article:

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

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

12 **§7-26-28. Notification of Tax Commissioner, Auditor and Treasurer.**

13 (a) Any county that imposes a transportation sales and service tax and a transportation use  
14 tax pursuant to this article, or changes the rate of the taxes, shall notify the Tax Commissioner at  
15 least sixty days before the effective date of the imposition of the taxes or the change in the rate of  
16 the taxes and provide the commissioner with a certified copy of the order of the county commission  
17 imposing the taxes or changing the rates of tax.

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

20 **§7-26-29. State level administration of county transportation sales and use taxes required; fee**  
21 **for services.**

22 (a) *State administration required.* – Any county commission that imposes a transportation

1 sales and service tax pursuant to this article and a county transportation use tax may not administer,  
2 collect or enforce those taxes. Authority to administer, collect and enforce county transportation  
3 sales and use taxes is vested solely in the Tax Commissioner as required by article fifteen-b, chapter  
4 eleven of this code.

5 (b) *Fee for services.* -- The Tax Commissioner may retain from net amount of sales and use  
6 taxes collected for a county pursuant to this article a fee not to exceed the lesser of the cost of the  
7 service provided or one percent of the amount of net amount of the taxes imposed pursuant to this  
8 article that are collected by the Tax Commissioner during any fiscal year, notwithstanding any  
9 provision of this code or rule to the contrary.

10 (c) *Deposit of fees in special revenue account.* -- The fees retained by the Tax Commissioner  
11 pursuant to subsection (b) of this section shall be deposited in the State Treasury in a special revenue  
12 revolving fund account known as the Tax Department Sales and Use Tax Operations Fund.

13 **§7-26-30. County transportation sales and service tax collected from purchaser.**

14 A vendor selling tangible personal property or custom software or furnish a service in a  
15 county that imposes a transportation sales and service tax pursuant to this article shall for the  
16 privilege of doing business in the county collect the county's transportation sales and service tax  
17 from the purchaser at the same time and in the same manner that the tax imposed by article fifteen,  
18 chapter eleven of this code, is collected from the customer. All sales of tangible personal property  
19 and custom software made in the county and all services furnished in the county are presumed to be  
20 subject to the county's transportation sales and service tax unless an exemption or exception applies.

21 **§7-26-31. Payment of county transportation use taxes.**

22 A county transportation use tax imposed pursuant to this article shall be paid to the Tax

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

6 **§7-26-32. County transportation sales and use taxes are in addition to other taxes.**

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

9 (1) The state consumers sales and service tax imposed by article fifteen, chapter eleven of  
10 this code;

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

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

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

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

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

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

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

20 **§7-26-33. Credit for sales tax paid to another county.**

21 (a) *Credit against county use tax.* -- A person is entitled to a credit against the use tax  
22 imposed by a county commission pursuant to this article on the use of tangible personal property,

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

7 (b) *Definitions.* -- For purposes of this section:

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

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

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

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

17 **§7-26-34. Sourcing rules for county transportation sales and use taxes.**

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

1 **§7-26-35. Application of state consumers sales and service tax provisions.**

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

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

11 (c) *Definitions incorporated.* – Any term used in this article or in an order adopted by a  
12 county commission pursuant to this article imposing county transportation sales and use taxes that  
13 is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code, as amended, and  
14 used in those articles in a similar context, shall have the same meaning when used in this article or  
15 in an order entered by the county commission pursuant to this article imposing transportation sales  
16 and use taxes, unless the context in which the term is used clearly indicates that a different result is  
17 intended by the Legislature.

18 **§7-26-36. Application of West Virginia Tax Procedure and Administration Act.**

19 Each and every provision of the West Virginia Tax Procedure and Administration Act set  
20 forth in article ten, chapter eleven of this code, and as amended from time to time by the Legislature,  
21 applies to the taxes imposed pursuant to this article, except as otherwise expressly provided in this  
22 article, with like effect as if that act were applicable only to the taxes imposed by this article and

1 were set forth in extensor in this article or the order entered by the county commission imposing the  
2 taxes pursuant to this article.

3 **§7-26-37. Application of West Virginia Tax Crimes and Penalties Act.**

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

9 **§7-26-38. Automatic updating.**

10 Any amendments to articles nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of this  
11 code shall automatically apply to transportation sales and service tax and transportation use tax  
12 imposed by county commissions pursuant to this article, to the extent any amendment is applicable  
13 to the taxes imposed by articles fifteen and fifteen-a, chapter eleven of this code.

14 **§7-26-39. Local rate and boundary changes.**

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

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

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

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

6 **§7-26-40. Deposit of county transportation sales and use taxes.**

7 (a) All county sales and use taxes collected by the Tax Commissioner under this article shall  
8 be collected and paid into the State Road Fund to the credit of each county commission's subaccount  
9 in the "County Road Improvement Account" established in the State Road Fund pursuant to this  
10 article.

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

18 (c) As soon as practicable after the transportation sales and use taxes for a particular county  
19 have been paid into the State Road Fund in any month for the preceding reporting period, the  
20 Commissioner of Highways may issue a requisition to the Auditor requesting issuance of a state  
21 warrant for the funds of the county in its subaccount, as provided in the intergovernmental agreement  
22 or agreements executed by the Commissioner of Highways and the county commission.

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

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

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

13 (d) Notwithstanding any other provision of this code or a rule to the contrary, the Tax  
14 Commissioner may deduct and retain for the benefit of his or her office for expenditure pursuant to  
15 appropriation of the Legislature from each payment into the "County Road Improvement Account"  
16 in the State Road Fund, as provided in subsection (c) of this section, the lesser of the cost of the  
17 service provided or one percent of the amount of net amount of the taxes imposed as a commission  
18 to compensate his or her office for the administration, collection and enforcement of county sales  
19 and use taxes.

20 **§7-26-41. Effective date of county transportation sales and use taxes.**

21 (a) Notwithstanding the effective date of an order of the county commission imposing  
22 transportation sales and use taxes, or changing the rate of tax, the tax or a rate change shall not

1 become operational and no vendor shall be required to collect the tax and no purchaser or user shall  
2 be required to pay the tax until the first day of a calendar quarter that begins at least sixty days after  
3 the Tax Commissioner complies with the requirements of section thirty-five, article fifteen-b, chapter  
4 eleven of this code.

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

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

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

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

15 **§7-26-42. Cash basis projects; termination of county transportation sales and use taxes;**  
16 **excess funds.**

17 (a) *Cash basis projects.* – When special revenue bonds have been issued as provided in this  
18 article and the amount of county transportation sales and use taxes imposed pursuant to this article  
19 and collected, less costs of administration, collection and enforcement, exceeds the amount needed  
20 to pay project costs and annual debt service, including the funding of required debt service and  
21 maintenance reserves, if any, the additional amount remaining in the county's subaccount in the  
22 County Road Improvement Account in the State Road Fund and shall be used to retire outstanding

1 revenue bonds before their maturity date in accordance with the terms of such bonds.

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

10           (c) *Excess funds.* – After all intergovernmental agreements with the Commissioner of  
11 Highways have ended and all debt service on special revenue bonds issued to finance, in whole or  
12 in part, the road construction projects has been paid or provided for, and transportation sales and use  
13 taxes imposed by the county have terminated, the Commissioner of Highways shall forward the  
14 unencumbered balance of moneys remaining in the county's subaccount in the County Road  
15 Improvement Account in the State Road Fund to the county commission of that county for deposit  
16 in the county's general fund.

17 PART VI. MISCELLANEOUS.

18 **§7-26-43. Powers supplemental.**

19           (a) *County Commissions* – The powers conferred by this article are in addition and  
20 supplemental to the powers conferred upon county commissions by the Legislature elsewhere in this  
21 chapter.

22           (b) *Commissioner of Highways.* – The powers conferred by this article are in addition and

1 supplemental to the powers conferred upon the Commissioner of Highways, the Division of  
2 Highways, and the Department of Transportation by the Legislature elsewhere in this code.

3 **§7-26-44. Public officials exempt from personal liability.**

4 No member of a county commission or other county officer shall be personally liable on any  
5 contract or obligation executed pursuant to the authority contained in this article. Nor shall such  
6 contracts or obligations or the issuance of revenue bonds by the Commissioner of Highways secured  
7 by transportation sales and use taxes imposed by county commissions under this article be  
8 considered as misfeasance in office.

9 **§7-26-45. Severability.**

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

NOTE: The purpose of this bill is give each county commission authority to submit road and bridge construction projects to the Commissioner of Highways. The bill authorizes county commissions to impose a county transportation sales and service tax and a county use tax, at a rate not to exceed one percent, to finance the construction, in whole or in part, thereby accelerating the time for completion of those projects. The bill states that the taxes would be collected by the Tax Commissioner, at same time and in the same manner as the state consumers sales and service tax and use taxes are collected. The bill permits the net county transportation sales and use taxes would be deposited in the County Road Improvement Account, a new account that would be created in the State Road Fund, to the credit of the county's subaccount in that account. The bill states that the funds in the subaccounts could be used to fund road and bridge construction projects on a cash basis and the Division of Highways would be authorized to issue special revenue bonds to finance construction secured by the county's subaccount. The bill provides criminal penalties.

This article is new; therefore, strike-throughs and underscoring have been omitted.