

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2015 JUL 31 A 9:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Transportation, Division of Highways TITLE NUMBER: 157

CITE AUTHORITY: W.Va. Code 17-17B

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: State Transportation Infrastructure Fund Program

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

**1900 Kanawha Boulevard East • Building Five • Room 148
Charleston, West Virginia 25305-0430 • (304) 558-2804**

**Earl Ray Tomblin
Governor**

**Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways**

**John R. McBrayer
Dep. Secretary of Trans.
for Administration/
Asst. Comm. of Highways**

**157 CSR 11 – State Transportation Infrastructure Fund Program
West Virginia Division of Highways**

Summary of Rule

The Rule establishes the State Transportation Infrastructure Fund Advisory Board pursuant to the requirements of H.B. 2778 and the provisions of Title 23, Chapter 6 of the United States Code. The Transportation Infrastructure Fund is a cooperative effort between the U.S. Department of Transportation and the state to maximize funds for transportation infrastructure projects in this state. A special fund with the State Road Fund will function as a revolving fund that will be available for transportation projects of municipalities and local government entities. The entities will pay back the amounts borrowed from the fund for the projects. The fund will be administered by the Advisory Board.

Circumstances Requiring Filing of Rule

The West Virginia Department of Transportation, Division of Highways (WVDOH) is responsible for the construction, maintenance and operations of the road system in the State of West Virginia which represents over 92% of the road system in the State. The transportation needs within the State are estimated at \$1 billion per year.

The Division is dependent on revenues generated from the purchase and use of motor fuel, motor vehicle fees, privilege tax on consumer purchases of motor vehicles, and federal funding generated from motor fuel purchases. Revenues are affected by state and national economic conditions, world events affecting availability and pricing of motor fuel, and fuel consumption rates for motor vehicles. As fuel consumption is forecast to decrease each year through fiscal year 2019, it is expected to have a significant impact on revenue collections unless there is a corresponding change to the tax rates or structure. Neither Privilege tax collections nor registration fee collections are forecasted to increase significantly through fiscal year 2019.

The legislature recognized the tremendous need for increased funding for highway infrastructure and passed H.B. 2778 during the 2015 regular session. This bill authorized the creation of the State Transportation Infrastructure Fund Program and required the Division of Highways to promulgate a legislature rule to effectuate that program. The infrastructure fund will enable local governmental entities and the state to maximize the available infrastructure fund.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

STATE TRANSPORTATION INFRASTRUCTURE FUND PROGRAM

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: WEST VIRGINIA DIVISION OF HIGHWAYS

Address: 1900 Kanawha Boulevard, East, Bldg 5, Room 148, Charleston, WV 25305

Phone Number: 304-558-2804 Email: gregory.l.bailey@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This Rule will have minimal if any effect on cost and revenues of the State government. The West Virginia Department of Transportation, Division of Highways (WVDOH) is responsible for the construction, maintenance and operations of the road system in the State of West Virginia which represents over 92% of the road system in the State. The transportation needs within the State are estimated at \$1 billion per year. This Rule will assist in addressing the transportation needs by allowing municipalities, state agencies, and quasi-state government agencies to advance work in their local municipalities. The only potential direct costs attributed to the Rule will be the time necessary for the WVDOH to review applications from potential project sponsors. It is anticipated these costs will be minimal.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

STATE TRANSPORTATION INFRASTRUCTURE FUND PROGRAM

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

This Rule provides an opportunity for local municipalities, other state agencies, and quasi-state agencies to assist in financing the highway needs in their geographic area. The Rule requires an initial infusion of funds, but this cannot be estimated given the uncertainty of the number of counties that would be willing to participate.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 30, 2015

Signature of Agency Head or Authorized Representative

Paul d. Mathis, Jr.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Transportation, Division of Highways
Bldg. 5, Room 148
1900 Kanawha Blvd., East
Charleston, WV 25305

LEGISLATIVE RULE TITLE: State Transportation Infrastructure Fund Program

1. Authorizing statute(s) citation WVa Code 17-17B-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 29, 2015

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 29, 2015 - 2:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

N/A

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Greg Bailey and Lorrie A. Hodges

WV Division of Highways
1900 Kanawha Blvd., East
Room 148, Bldg. 5
Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Michael J. Folio, Legal Division Director

WV Division of Highways
Bldg. 5, Room 517
1900 Kanawha Blvd., E.
Charleston, WV 25305
304-558-2823
Michael.J.Folio@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

TITLE 157
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 11
STATE TRANSPORTATION INFRASTRUCTURE
FUND PROGRAM

FILED
2015 JUL 31 A 9:11
OFFICE WEST VIRGINIA
SECRETARY OF STATE

157-11-1. General.

1.1. Scope. – This legislative rule establishes general rules pertaining to the West Virginia Division of Highways entering into a cooperative agreement with the United States Secretary of Transportation to establish an infrastructure revolving fund to be known as the State Transportation Infrastructure Fund.

1.2. Authority. – W. Va. Code §17-17B-5.

1.3. Filing Date. –

1.4. Effective Date. –

157-11-2. Definitions.

2.1 "Board" means the board of directors of the fund.

2.2 "Capitalized" means depositing funds as initial capital into the fund.

2.3 "Commissioner" means the West Virginia Commissioner of Highways.

2.4 "Cooperative agreement" means written consent between the state and the United States Department of Transportation Secretary pursuant to Title 23, Chapter 6 of the United States Code.

2.5 "Department" means the West Virginia Department of Transportation.

2.6 "Division" means the West Virginia Division of Highways, a division within the West Virginia Department of Transportation.

2.7 "Eligible borrower" means any government unit which is authorized to develop or construct an eligible project.

2.8 "Eligible cost" means as applied to an eligible project to be financed from the federal accounts, the costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the fund. As applied to an eligible project to be financed from the state accounts, these costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right-of-way acquisition, legal and

financial services associated with the development of the eligible project, construction, construction management, facilities, and other costs necessary for the eligible project.

2.9 "Eligible project" means a project of a government unit that meets the eligibility criteria of the National Highway System Designation Act of 1995, Public Law 104-59, Section 350, which provides public benefits by enhancing mobility and safety, promoting economic development, or increasing the quality of life and general welfare of the public. The eligible project may be done by a private entity provided that it is an eligible project of a government unit.

2.10 "Federal accounts" means, collectively, the separate accounts for federal highway funds.

2.11 "Financing agreement" means any agreement entered into by an eligible borrower pertaining to a loan or other financial assistance. This agreement may contain, in addition to financial terms, provisions relating to the regulation and supervision of eligible project, or other provisions as the Commissioner in consultation with the board may determine. The term "financing agreement" includes, without limitation, a loan agreement, trust indenture, security agreement, reimbursement agreement, guarantee agreement, bond or note, ordinance or resolution, or similar instrument.

2.12 "Fund" means the State Transportation Infrastructure Fund that is in the West Virginia Treasury. The fund shall be a revolving fund to be administered by the Commissioner of the Division to enter loan obligations or make loans to or for the benefit of an eligible borrower for the undertaking of an eligible project by a project sponsor.

2.13 "Government unit" means municipalities, counties, state agencies, and quasi-state government agencies.

2.14 "Initial assistance" means the first round of funds that are loaned or used for credit enhancement from the fund for eligible projects. The initial assistance shall not be made in the form of a grant.

2.15 "Loan" means any form of direct financial assistance from the fund that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the eligible costs of an eligible project. A loan may be disbursed in anticipation of reimbursement for or direct payment of eligible costs of a eligible project.

2.16 "Loan obligation" means a bond, note, or other evidence of an obligation.

2.17 "Private entity" means a private person or entity, that has entered into an approved contract with a government unit to undertake an eligible project.

2.18 "Project revenues" means all rates, rents, fees, assessments, charges, and other receipts derived or to be derived by an eligible borrower from a eligible project or made available from a special source, and, as provided in the applicable financing agreement, derived from any system of which the eligible project is a part of, from any other revenue producing facility under the ownership or control of the eligible borrower including, without limitation, proceeds of grants, gifts, appropriations and loans, including the proceeds of loans made from the fund, investment earnings,

reserves for capital and current expenses, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other special source as may be provided by the eligible borrower.

2.19 "Project sponsor" may be a government unit to undertake completion of construction of an eligible project.

2.20 "Revenues" means, when used with respect to the fund, any receipts, fees, income, or other payments received or to be received by the fund including, without limitation, receipts and other payments deposited in the fund and investment earnings on its funds and accounts.

2.21 "State accounts" means, collectively, the separate accounts for state highway funds.

157-11-3. State Transportation Infrastructure Fund Advisory Board.

3.1. A Board is hereby created to make recommendations and offer counsel to the Commissioner or the Commissioner's designee. The Board may offer recommendations and counsel to the Commissioner regarding all aspects of the fund, including, but not limited to, identifying and determining eligible borrowers, eligible projects, financing agreements, loans, and loan obligations as well as the manner in which the fund is capitalized and the manner in which obligations to the fund are enforced.

3.2. The Commissioner shall be the chairperson of the Board. The Board shall consist of five persons as follows:

- 3.2.a. The assistant commissioner of the Division;
- 3.2.b. The business manager of the Division;
- 3.2.c. A member of the Division's program planning and administration division;
- 3.2.d. The Division's state highway engineer; and
- 3.2.e. The director of the Division's legal division.

3.3. Members of the Board shall receive no compensation for their work on the Board other than compensation for their regular employment by the Division; provided, however, members of the Board shall be reimbursed from the fund for actual and necessary expenses incurred for the discharge of their official duties as members of the Board in a manner consistent with the guidelines of the department of administration.

157-11-4. Operation and Powers of the State Transportation Infrastructure Board.

4.1 The Board, in consultation with the Commissioner, shall adopt and promulgate bylaws, consistent with W.Va. Code § 17-17B-1 et seq., for the administration of the fund's affairs and the implementation of the fund's functions, including, but not limited to, the identification and selection of eligible borrowers, eligible costs, and eligible projects as well as the determination of the amount

of initial assistance and the manner in which the fund shall be capitalized.

4.2 The board shall have the following powers:

4.2.a. Have perpetual succession;

4.2.b. Adopt, promulgate, amend, and repeal bylaws;

4.2.c. Sue and be sued in its own name;

4.2.d. Have a seal and alter it at the Board's pleasure, although the failure to affix the seal does not affect the validity of an instrument may be executed on behalf of the board;

4.2.e. Make loans to eligible borrowers to finance the eligible costs of eligible projects and to acquire, hold, and subordinate loan obligations in a manner as the Board determines advisable;

4.2.f. Provide eligible borrowers with other financial assistance necessary to defray eligible costs of an eligible project;

4.2.g. Enter into contracts, arrangements, and agreements with eligible borrowers and other persons and execute and deliver all financing agreements and other instruments necessary or convenient to the exercise of the powers granted by W.Va. Code 17-17B-1 et seq.;

4.2.h. Enter into agreements with a government unit, private entity, department, agency, or instrumentality of the United States or of this State or another state for the purpose of planning and providing for the financing of eligible projects;

4.2.i. Establish policies and procedures for the making and administering of loans and other financial assistance and fiscal controls and accounting procedures to ensure proper accounting and reporting of the fund, government units, eligible borrowers, and private entities;

4.2.j. Acquire by purchase, lease, donation, or other lawful means and sell, convey, pledge, lease, exchange, transfer, and dispose of all or any part of its properties and assets of every kind and character or any interest in it to further the public purpose of the fund;

4.2.k. Collect or authorize the trustee under any trust indenture securing any bonds to collect amounts due under any loan obligations owned by it, including taking the action required to obtain payment of any sums in default;

4.2.l. Consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any loan obligations owned by it;

4.2.m. Expend funds to obtain accounting, management, legal, financial consulting, and other professional services necessary to the operations of the fund;

157CSR11

4.2.n. Expend funds credited to the fund as the Board determines necessary for the costs of administering the operations of the fund;

4.2.o. Procure insurance against losses in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents or to establish cash reserves to enable it to act as a self-insurer against any and all such losses;

4.2.p. Collect fees and charges in connection with its loans or other financial assistance;

4.2.q. Apply for, receive and accept from any source, aid, grants, and contributions of money, property, labor, or other things of value to be used to carry out the purposes of the fund;

4.2.r. Enter into contracts or agreements for the servicing and processing of financial agreements;

4.2.s. Enter into loan obligations and loans that may be secured or unsecured;

4.2.t. Accept notes and other forms of obligation to evidence any indebtedness as well as mortgages, liens, pledges, assignments or other security interests to secure such indebtedness;

4.2.u. Take all actions that are appropriate to protect security interests, ensure repayment of any indebtedness, and safeguard against losses of the fund, including, but not limited to, initiating foreclosures, default proceedings, and all other forms of redress, whether legal or equitable in nature;

4.2.v. Determine future capital needs of the fund. The future capital needs of the fund may be determined each year based on an actuarial valuation that reflects, among other things, anticipated revenues, project revenues, amounts in federal accounts and state accounts, fund costs, loan defaults and related risk exposure to the extent such valuation is consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

4.2.w. Do all other things necessary or convenient to exercise powers granted or reasonably implied by W.Va. Code §17-17B-1 et seq.