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LEGISLATURE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975

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ENROLLED

HOUSE BILL No. 1392

(By Mr. Moats and Mr. Binsmore)

— ● —

PASSED March 8, 1975

In Effect from Passage



ENROLLED

H. B. 1392

(By MR. MOATS and MR. DINSMORE)

[Passed March 8, 1975; in effect from passage.]

AN ACT to amend and reenact sections four, five, six, seven, eight, nine, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the industrial development and commercial development bond act; conferring powers on counties and municipalities with respect to industrial projects and commercial projects and the issuance of revenue bonds therefor; relating to the location of industrial projects and commercial projects; relating to the joint establishment of industrial projects or commercial projects or additions thereto; relating to revenue bonds issued to finance industrial projects or commercial projects; specifying that a debt of a county or municipality may not be created in connection with an industrial project or commercial project; providing details with respect to the provisions, issuance and execution of such revenue bonds; relating to the issuance of additional revenue bonds; providing a statutory mortgage lien and the pledging of revenues from such industrial project or commercial project as security for such revenue bonds; also authorizing a trust indenture, mortgage or deed of trust as security for such revenue bonds; relating to resolutions authorizing the issuance of such revenue bonds; relating to the provisions to be contained in any such trust indenture, mortgage or deed of trust; authorizing the appointment of a receiver; relating to foreclosure proceedings; establishing certain requirements respecting the agreement for the lease, sale or financing of an industrial project or commercial

project and the contents of any such agreement; relating to the use of proceeds from the sale of all revenue bonds issued under said article two-c; prohibiting contributions by counties and municipalities from their general funds or otherwise in the establishment of an industrial project or commercial project; specifying that all such revenue bonds shall be paid solely from the revenue derived from the industrial project or commercial project; providing exemptions from taxation; and prohibiting any financial interest of public officials in any such industrial project or commercial project.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, seven, eight, nine, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-4. Powers conferred on counties and municipalities.

1 In addition to any other powers which a county or municipi-
2 pality may now have, each county, by and through its
3 county commission, and each municipality, by and through
4 its council or other governing body in lieu thereof, shall have
5 the following powers: (1) To acquire, whether by purchase,
6 construction, gift, lease or otherwise, one or more industrial
7 projects or commercial projects, or additions thereto, which
8 shall be located within this state; (2) to lease, lease with an
9 option to purchase, sell, by installment sale or otherwise, or
10 otherwise dispose of, to others any or all of its industrial proj-
11 ects or commercial projects for such rentals or amounts and
12 upon such terms and conditions as the governing body may
13 deem advisable; (3) to finance one or more industrial projects
14 or commercial projects by making secured or unsecured loans
15 to others to provide funds for the acquisition, by purchase, con-
16 struction, lease or otherwise, or any such project or proj-
17 ects; (4) to issue revenue bonds for the purpose of defraying
18 the cost of acquisition, by construction, purchase, lease or
19 otherwise, by the county, municipality or others, of an industrial
20 project or commercial project or an addition, extension, or
21 improvement thereto, and to secure the payment of such bonds,

22 all as hereinafter provided; and (5) to issue and deliver revenue
23 bonds in exchange for an industrial project or commercial
24 project.

§13-2C-5. Location of industrial projects or commercial projects.

1 Any industrial project or commercial project acquired by
2 construction and purchase, or by either, or financed by a
3 county, shall be located within the county issuing such revenue
4 bonds and any industrial project or commercial project acquired
5 by construction and purchase, or by either, or financed by a
6 municipality, may be situated without or within the corporate
7 bounds of such municipality, but it shall be located within the
8 county in which said municipality is situated, except where a
9 part of such municipality is situated within two or more coun-
10 ties, then said industrial project or commercial project may be
11 located within either county of which said municipality forms a
12 part and when an industrial project or commercial project is so
13 acquired or financed by a municipality the same shall not be
14 located within the corporate bounds of another municipality
15 without the consent of the governing body of such municipality.

§13-2C-6. Joint establishment by two or more governmental bodies.

1 Any two or more governmental bodies may jointly acquire
2 by construction and purchase, or by either, or finance one or
3 more industrial projects or commercial projects or additions
4 thereto by the issuance and delivery of revenue bonds in which
5 case such governmental bodies shall jointly exercise all the
6 rights, authority, power and duties herein conferred upon a
7 county commission or a municipality when acting singly and
8 they shall also be subject to the same limitations, restrictions
9 and conditions as are herein imposed on a single governmental
10 body in connection with the acquisition or financing of an in-
11 dustrial project or commercial project. The respective govern-
12 ing bodies, acting jointly, may provide by agreement among
13 themselves, the terms and conditions of such joint participation.

§13-2C-7. Bonds issued to finance industrial project or commercial project.

1 All bonds issued by a county commission or by a muni-
2 cipality under the authority of this article shall be limited obliga-
3 tions of the county, or of the municipality. The principal and

4 interest on such bonds shall be payable out of the revenues
5 derived from the lease, sale, financing or other disposition of
6 the industrial project or commercial project for which the bonds
7 are issued, or any other revenue derived from such industrial
8 project or commercial project. The bonds and interest coupons
9 issued under the authority of this article shall never constitute
10 an indebtedness of the county, or of the municipality issuing the
11 same, within the meaning of any constitutional provision or
12 statutory limitation and shall never constitute or give rise to a
13 pecuniary liability of the county, or of the municipality issuing
14 the same. Neither shall such bond nor interest thereon be a
15 charge against the general credit or taxing powers of the county,
16 or the municipality and such fact shall be plainly stated on the
17 face of each such bond. Such bonds may be executed, issued
18 and delivered at any time and from time to time; may be in such
19 form and denomination; may be of such tenor, must be negoti-
20 able but may be registered as to the principal thereof or
21 as to the principal and interest thereof; may be payable
22 in such amounts and at such time or times; may be pay-
23 able at such place or places; may bear interest at such
24 rate or rates payable at such place or places and evidenced in
25 such manner; and may contain such provisions therein not in-
26 consistent herewith, all as shall be provided in the proceedings
27 of the governing body whereunder the bonds shall be author-
28 ized to be issued. Said bonds may be sold by the governing body
29 at public or private sale at, above or below par, as the govern-
30 ing body shall authorize. The said bonds may also be issued and
31 delivered to the owner of an industrial project or commercial
32 project in exchange therefor and in partial or complete payment
33 of the purchase price thereof.

34 The bonds issued pursuant to this article by a county com-
35 mission shall be signed by the president and attested by the
36 clerk of the county commission under the seal of the commis-
37 sion and the bonds issued by a municipality shall be signed by
38 the mayor or other chief officer thereof and attested by the
39 clerk, recorder or other official custodian of the records of said
40 municipality and under the seal of the municipality. The
41 coupons attached thereto shall bear the facsimile signature of
42 the president of the county commission or the mayor or other
43 chief officer of the municipality. In case any of the officials

44 whose signatures appear on the bonds or coupons shall cease to
45 be such officers before the delivery of such bonds, such signa-
46 tures shall, nevertheless, be valid and sufficient for all purposes
47 to the same extent as if they had remained in office until such
48 delivery.

49 If the proceeds of such bonds by error of calculation or
50 otherwise, shall be less than the cost of the industrial project
51 or commercial project, or if additional real or personal property
52 is to be added to the industrial project or commercial project,
53 additional bonds may in like manner be issued to provide the
54 amount of the deficiency, or to defray the cost of acquiring
55 or financing such additional real or personal property, and
56 unless otherwise provided for in the trust agreement, mortgage
57 or deed of trust, shall be deemed to be of the same issue, and
58 shall be entitled to payment from the same fund, without pre-
59 ference or priority, and shall be of equal priority as to any
60 security.

§13-2C-8. Security for bonds.

1 There is hereby created a statutory mortgage lien upon all
2 real estate, buildings, structures, improvements and personal
3 property included as a part of an industrial project or commer-
4 cial project which was acquired, purchased, constructed, or
5 built or improved, or financed with the proceeds of the bonds
6 authorized to be issued under this article, for the purpose of
7 securing the principal of said bonds and the interest thereon.
8 The principal of and interest on any bonds issued under the
9 authority of this article shall be secured by a pledge of the in-
10 come and revenues derived from the lease, sale, financing or
11 other disposition of the industrial project or commercial project,
12 and also be secured by a pledge of the proceeds of any sale
13 thereof. In the discretion and at the option of the county com-
14 mission or municipality, such revenue bonds may also be
15 secured by a trust indenture by and between the county com-
16 mission or the municipality and a corporate trustee, which may
17 be a trust company or bank having trust powers, within or with-
18 out the state of West Virginia. The governing body may
19 authorize the issuance of such revenue bonds by resolution.
20 The resolution authorizing the revenue bonds and fixing the
21 details thereof may provide that such trust indenture may con-

22 tain such provisions for the protection and enforcing the rights
23 and remedies of the bondholders as may be reasonable and
24 proper, not in violation of law, including covenants setting forth
25 the duties of the county commission or the municipality in rela-
26 tion to the construction, acquisition or financing of an in-
27 dustrial project or commercial project, or part thereof, or an
28 addition thereto, and the improvement, repair, maintenance and
29 insurance thereof, and for the custody, safeguarding and appli-
30 cation of all moneys, and may provide that the industrial project
31 or commercial project shall be constructed and paid for under
32 the supervision and approval of the consulting engineers or
33 architects employed and designated by the governing body and
34 satisfactory to the purchasers of the bonds, their successors,
35 assigns or nominees, and the entity which leases, purchases or
36 will own the project or either thereof, who may require the
37 security given by any contractor or any depository of the pro-
38 ceeds of the bonds or the revenues received from the lease, sale,
39 financing or other disposition of the industrial project or com-
40 mercial project be satisfactory to such purchasers, their succes-
41 sors, assigns or nominees, or be satisfactory to the entity which
42 leases, purchases or will own the industrial project or commer-
43 cial project. Such indenture may set forth the rights and
44 remedies of the bondholders, the county or municipality or such
45 trustee and said indenture may provide for accelerating the
46 maturity of the revenue bonds, at the option of the bond-
47 holders or the governmental body issuing the same, upon de-
48 fault in the payment of rentals, or amounts due from the
49 entity which leases, purchases, or will own the project or for
50 other cause. The governing body may also provide by resolu-
51 tion and in such trust indenture for the payment of the proceeds
52 of the sale of the bonds and the revenues from the industrial
53 project or commercial project to such depository as it may
54 determine, for the custody and investment thereof and for the
55 method of distribution thereof, with such safeguards and restric-
56 tions as it may determine to be necessary or advisable for the
57 protection thereof and upon the filing of a certified copy of such
58 resolution or of the indenture for record in the office of the
59 clerk of the county commission of the county in which an in-
60 dustrial project or commercial project is located, the same shall
61 have the same effect, as to notice, as the recordation of a deed
62 of trust or other recordable instrument.

63 In lieu of the indenture provided for hereinabove the principal
64 of and interest on said bonds may be secured by a mortgage
65 or deed of trust covering all or any part of the industrial project
66 or commercial project from which the revenues so pledged
67 may be derived, and the same may be secured by an assign-
68 ment of the lease on or sale or financing agreement with
69 respect to said industrial project or commercial project and by
70 assignment or pledge of the income received by virtue of said
71 lease, sale or financing agreement. The proceedings under
72 which such bonds are authorized to be issued, when secured
73 by a mortgage or deed of trust, may contain the same terms,
74 conditions and provisions provided for herein when an in-
75 denture is entered into between the governing body and a
76 trustee and any such mortgage or deed of trust may contain
77 any agreements and provisions customarily contained in in-
78 struments securing bonds, including, without limiting the gen-
79 erality of the foregoing, provisions respecting the fixing and
80 collection of rental, purchase or other payments for any in-
81 dustrial project or commercial project covered by such pro-
82 ceedings or mortgage, the terms to be incorporated in the lease,
83 sale or financing agreement with respect to such industrial
84 project or commercial project, the improvement, repair, main-
85 tenance and insurance of such industrial project or commer-
86 cial project, the creation and maintenance of special funds from
87 the revenues received from the lease, sale or financing of such
88 industrial project or commercial project and the rights and
89 remedies available in event of default to the bondholders, the
90 governmental body, or to the trustee under an agreement, in-
91 denture, mortgage, or deed of trust, all as the governing body
92 shall deem advisable and as shall not be in conflict with the
93 provisions of this article or any existing law: *Provided*, That
94 in making any such agreements or provisions a county or
95 municipality shall not have the power to obligate itself by
96 indenture, ordinance, resolution, mortgage or deed of trust,
97 except with respect to the industrial project or commercial
98 project and the application of the revenues therefrom, and
99 shall not have the power to incur a pecuniary liability or a
100 charge upon its general credit or against its taxing powers.
101 The proceedings authorizing any bonds hereunder and any
102 indenture, mortgage or deed of trust securing such bonds may
103 provide that, in the event of default in payment of the principal

104 of or the interest on such bonds or in the performance of any
105 agreement contained in such proceedings, indenture, mortgage
106 or deed of trust, such payment and performance, may be
107 enforced by the appointment of a receiver in equity with power
108 to charge and collect rents or other amounts and to apply the
109 revenues from the industrial project or commercial project in
110 accordance with such proceedings or the provisions of such
111 agreement, indenture, mortgage or deed of trust. Any such
112 agreement, indenture, mortgage or deed of trust may provide
113 also that, in the event of default in such payment or the viola-
114 tion of any agreement contained in the mortgage or deed of
115 trust, the agreement, indenture, mortgage or deed of trust may
116 be foreclosed either by sale at public outcry or by proceedings
117 in equity and may provide that the holder or holders of any
118 of the bonds secured thereby may become the purchaser at any
119 foreclosure sale, if the highest bidder therefor. No breach of
120 any such agreement, indenture, mortgage or deed of trust shall
121 impose any pecuniary liability upon a county or municipality
122 or any charge upon its general credit or against its taxing
123 powers.

§13-2C-9. Requirements respecting lease, sale or financing of an industrial project or commercial project.

1 Prior to the issuance of any bonds, the county commission
2 or the municipality shall enter into an agreement to lease, sell
3 or finance the industrial project or commercial project to a
4 lessee, purchaser or owner which agreement provides for pay-
5 ment to the county commission or municipality or designated
6 depository of such rentals or amounts as will be sufficient (a)
7 to pay the principal of and interest on the bonds issued to
8 finance the project as such principal and interest respectively
9 mature, (b) to build up and maintain any reserves deemed by
10 the governing body to be advisable in connection therewith, and
11 (c) unless the agreement obligates the lessee, purchaser or own-
12 er to pay for the cost of maintaining, repairing and insuring of
13 the project, to pay the costs of maintaining the project in good
14 repair and keeping it properly insured. The said agreement shall
15 contain a provision for the revision thereof from time to time, so
16 as to produce sufficient revenue to pay the interest and create a
17 sinking fund sufficient to pay the principal of said bonds when
18 due and to provide for the maintenance, repair and insurance of

19 the industrial project or commercial project unless the latter be
20 assumed by the lessee, purchaser or owner. The said agreement
21 shall also contain such other provisions relating to the industrial
22 project or commercial project and the operation, maintenance
23 and improvemnet thereof and as to the rights of the parties to
24 said agreement as shall be deemed necessary and advisable
25 by the governmental body.

§13-2C-12. Use of proceeds from sale of bonds.

1 The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the purpose
3 for which the bonds were issued: *Provided*, That any accrued
4 interest and premium received in any such sale shall be
5 applied to the payment of the principal of or the interest on
6 the bonds sold: *Provided, however*, That if for any reason
7 any portion of such proceeds shall not be needed for the
8 purpose for which the bonds were issued, then such unneeded
9 portion of said proceeds shall be applied to the purchase
10 of bonds for cancellation or payment of the principal of or
11 the interest on said bonds, or held in reserve for the payment
12 thereof. The cost of acquiring any industrial project or com-
13 mercial project shall be deemed to include the following: The
14 cost of acquiring any real estate deemed necessary, the actual
15 cost of the construction of any part of an industrial project or
16 commercial project which may be constructed, including archi-
17 tects', engineers', financial or other consultants' and legal fees,
18 the purchase price or rental of any part of a project that may be
19 acquired by purchase or lease, all expense incurred in connec-
20 tion with the authorization, sale and issuance of the bonds to
21 finance such acquisition, and the interest on such bonds for a
22 reasonable time prior to construction, during construction, and
23 for not exceeding twelve months after completion of con-
24 struction and any other costs and expense reasonably necessary
25 in the establishment and acquisition of such industrial project
26 or commercial project and the financing thereof.

§13-2C-13. No contribution by county or municipality.

1 No county commission or municipality shall have the
2 power to pay out of its general funds, or otherwise con-
3 tribute, any of the costs of acquiring, constructing or financing
4 an industrial project or commercial project, to be acquired, con-

5 structed or financed out of the proceeds from the sale of
6 revenue bonds issued under the authority of this article: *Pro-*
7 *vided*, That this provision shall not be construed to prevent a
8 county or municipality from accepting donations of property to
9 be used as a part of an industrial project or commercial project
10 or to be used for defraying any part of the cost of any such
11 project. The bonds issued pursuant to this article shall be pay-
12 able solely from the revenue derived from the industrial project
13 or commercial project or the financing thereof and shall not
14 constitute an indebtedness of the county or of the municipality
15 within the meaning of any constitutional provision and it shall
16 be plainly stated on the face of each bond that it has been issued
17 under the provisions of this article and that it does not consti-
18 tute an indebtedness of the county or municipality within the
19 meaning of the constitution of West Virginia.

20 No county commission or municipality shall have the
21 authority under this article to levy any taxes for the purpose
22 of paying any part of the cost of acquiring, constructing
23 or financing an industrial project or commercial project. How-
24 ever, all necessary preliminary expenses actually incurred by
25 a county commission or a municipality in the making of
26 surveys, taking options, preliminary planning, and all other
27 expenses necessary to be paid prior to the issuance, sale and
28 delivery of the revenue bonds, may be paid by such govern-
29 mental body out of any surplus contained in any item of
30 budgetary appropriation or any revenues collected in excess
31 of anticipated revenues, which shall be reimbursed and repaid
32 out of the proceeds of the sale of the revenue bonds.

§13-2C-15. Exemption from taxation.

1 The revenue bonds issued pursuant to this article and the
2 income therefrom shall be exempt from taxation except in-
3 heritance, estate and transfer taxes; and the real and personal
4 property which a county commission or a municipality may
5 acquire to be leased, sold or otherwise disposed of according
6 to the provisions of this article, shall be exempt from taxa-
7 tion by the state, or any county, municipality, or other levying
8 body, as public property, so long as the same is owned by
9 such county or municipality.

§13-2C-20. Prohibition of financial interest of public officials.

1 No member of a county commission or the governing body
2 of a municipality issuing revenue bonds under the provisions
3 of this article shall have any financial interest, directly or
4 indirectly, in the leasing, sale or other disposition of an in-
5 dustrial project or commercial project acquired, constructed or
6 financed pursuant to this article.

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

James L. Davis

Chairman Senate Committee

Clarence C. Chubb

Chairman House Committee

Originated in the House.

Takes effect from passage.

J. C. Deaton, Jr.

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

W. K. Booth

President of the Senate

Lewis F. M. Thomas

Speaker House of Delegates

The within approved this the 25th
day of March, 1975.

Arch A. Shaffer

Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/75

Time 4:30 p.m.