WEST VIRGINIA CODE CHAPTER 13 ARTICLE 2D

WV Legislature

§13-2D-1. Short title.

This article may be known as and may be cited as the "Airport Development Bond Act."

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§13-2D-2. Legislative finding.

It is hereby determined and declared as a matter of legislative finding (a) that the development of airports is essential to the further social and economic growth of this state; (b) that the present and prospective health, happiness, safety, right of gainful employment and general welfare of the citizens of each of the counties of this state will be promoted by the establishment of airports as herein provided; and (c) that the means and measures herein authorized for the promotion of airports are as a matter of public policy, for the public purposes of the several counties and the State of West Virginia.

WV Legislature

§13-2D-3. Definitions.

The following terms, whenever used in this article, shall have the following meaning:

(a) The term "county court" shall mean a governing body created pursuant to section 22 of article VIII of the Constitution of this state and any other governing body established in lieu thereof pursuant to section 29, article VIII of the Constitution of this state.

(b) The term "airport" shall mean all real and personal property necessary for the acquisition, construction, equipment, improvement, maintenance or operation of a public facility for the taking off and landing of airplanes, and all appurtenances and facilities usual and convenient in connection with such facility for the convenience and accommodation of the inhabitants of the county and the public generally, and shall include airports for the use of aircraft as described elsewhere in this code.

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§13-2D-4. Powers conferred on counties.

In addition to the powers which counties have with respect to airports pursuant to the other provisions of this code, each county, by and through its county court, shall have the following powers: (1) To issue revenue bonds for the purpose of defraying the cost or any part thereof, of acquiring, by construction and purchase, or by either, an airport, or an addition, extension or improvement thereto, and to secure the payment of such bonds, all as hereinafter provided; and (2) to issue and deliver revenue bonds in exchange for an airport or a private facility for the taking off and landing of airplanes with appurtenant facilities and conveniences.

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§13-2D-5. Bonds issued to finance airport.

All bonds issued by a county commission under the authority of this article shall be limited obligations of the county, the principal of and interest on which shall be payable out of the revenues derived from the operation of the airport for which the bonds are issued or any other revenue derived from such airport, less operating and maintenance costs and expenses. The bonds and interest coupons issued under the authority of this article shall never constitute evidence of indebtedness of the county issuing the same within the meaning of any Constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county issuing the same. Neither shall such bonds and interest thereon be a charge against the general credit or taxing powers of the county and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time, and from time to time, may be in such form and denomination, may be of such tenor, must be negotiable but may be registered as to the principal thereof, may be payable in such amounts and at such time or times, may be payable at such place or places, may bear interest at such rate or rates not to exceed twelve percent per annum, payable at such place or places and evidenced in such manner, and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the county commission whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the county commission at public or private sale, and such sale shall be made at a price not lower than a price which, computed upon standard tables of bond values, will have a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The said bonds may also be issued and delivered to the owners of an airport or private facility for the landing and taking off of airplanes with appurtenant facilities and conveniences in exchange therefor and in payment of the purchase price thereof.

The bonds issued pursuant to this article by a county commission shall be signed by the president of the county commission and attested by the clerk of the county commission under the seal of the commission. The coupons attached thereto shall bear the facsimile signature of the president of the county commission. In case any of the officials whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery.

If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the airport, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement, mortgage, or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.

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§13-2D-6. Security for bonds.

There is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an airport which is acquired, purchased, constructed, or built or improved with the proceeds of bonds authorized to be issued under this article, for the purpose of securing the principal of said bonds and the interest thereon. The principal of and interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the operation of the airport and any other revenue derived from such airport, less the operating and maintenance costs and expenses, and also be secured by a pledge of the proceeds of any sale thereof. In the discretion and at the option of the county court, such revenue bonds may be secured by a trust indenture by and between the county court and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia. The county court may authorize the issuance of such revenue bonds by order or resolution. The order or resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcement of the rights and remedies of the bondholders as may be reasonable and proper, and not in violation of law, including covenants setting forth the duties of the county court in relation to the construction or acquisition of an airport, or part thereof, or an addition thereto, and the improvement, operation, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the airport shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the county court and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, who may require the security given by any contractor and/or any depository of the proceeds of the bonds or the revenues received from the operation or sale of the airport to be satisfactory to such purchasers, their successors, assigns or nominees, and/or be satisfactory to the purchaser of the airport. Such indenture may set forth the rights and remedies of the bondholders, the county and/or such trustee and said indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders upon default by the county court issuing the same in the payment of the principal of said bonds or the interest thereon. The county court may also provide by order or resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the airport to such depository as it may determine for the custody thereof and for the method of distribution thereof, with such safeguards and restrictions as it may determine to be necessary or advisable for the protection thereof and upon the filing of a certified copy of such order or resolution, or of the indenture agreement for record in the office of the clerk of the county court of any county in which an airport is located the same shall have the same effect as to notice as the recordation of a deed of trust or other recordable instrument.

In lieu of the indenture agreement provided for hereinabove the principal of and interest on said bonds may be secured by a mortgage or deed of trust covering all or any part of the airport from which the revenues so pledged may be derived and the same may be secured by an assignment or pledge of the revenue received from the airport, less operating and

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maintenance costs and expenses. The proceedings under which such bonds are authorized to be issued, when such bonds are to be secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture agreement is entered into between the county court and a trustee, and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenue for any airport covered by such proceedings or mortgage, the terms to be incorporated in the agreement with respect to such airport, the maintenance and insurance of such airport, the creation and maintenance of special funds from the revenues received from such airport and the rights and remedies available to the bondholders, the county court or to the trustee under such mortgage or deed of trust, in event of default, all as the county court shall deem advisable and as shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any such agreements or provisions a county shall not have the power to obligate itself by indenture, order, resolution, mortgage or deed of trust, except with respect to the airport and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any indenture, mortgage or deed of trust securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, indenture, mortgage or deed of trust, such payment and performance may be enforced by the appointment of a receiver in a civil action with power to charge and collect revenue and to apply the revenues from the airport in accordance with such proceedings or the provisions of such indenture, agreement, mortgage or deed of trust. Any such mortgage or deed of trust may provide also that, in the event of default in such payment or the violation of any agreement contained in the mortgage or deed of trust, the mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in a civil action, and may provide that the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a county or any charge upon its general credit or against its taxing powers.

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§13-2D-7. Redemption of bonds.

Revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by the county court, and at such redemption prices, or premiums, which terms shall be stated in the bonds.

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§13-2D-8. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a county by the issuance of its refunding bonds in such amount as the county court may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to make any improvements or alterations to the airport; and to pay any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from the revenues out of which the bonds to be refunded thereby were payable, shall be subject to the provisions contained in section five of this article and shall be secured in accordance with the provisions of section six of this article.

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§13-2D-9. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: Provided, however, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds, or held in reserve for the payment thereof. The cost of acquiring any airport shall be deemed to include the following: The cost of acquiring any real estate or personal property deemed necessary, the actual cost of the construction of any part of the airport and appurtenances and facilities which may be constructed, including architects', engineers', financial or other consultants', and legal fees; the purchase price of any part of the airport and appurtenances and facilities that may be acquired by purchase; all expenses incurred in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a period not exceeding twelve months after completion of construction and any other cost and expense necessary to the establishment and acquisition of such airport and the financing thereof.

WV Legislature

§13-2D-10. No contribution by county.

No county court shall have the power to pay out of its general funds, or otherwise contribute, any of the cost of acquiring or constructing an airport or its appurtenances and facilities, which is to be financed out of the proceeds of the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county from paying for the acquisition of property for an airport or for the construction, equipment, improvement, maintenance and operation of any airport pursuant to other provisions of this code so long as any such acquisition of property or the construction, equipment, improvement, maintenance and operation of such airport is not financed by the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, however, That this provision shall not be construed to prevent a county from accepting donations of property to be used as a part of any such airport. The bonds issued pursuant to this article shall be payable solely from the revenue derived from the airport, less operating and maintenance cost and expenses, and shall not constitute an indebtedness of the county within the meaning of any Constitutional provision and it shall be plainly stated on the face of each bond that it has been issued under the provisions of this article and that it does not constitute an indebtedness of the county within the meaning of the Constitution of West Virginia.

No county court shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring an airport to be financed under the provisions of this article. However, all necessary preliminary expenses actually incurred by a county court in the making of studies, surveys, taking options, preliminary planning, and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenues bonds, may be paid by such county court out of any surplus contained in any item of budgetary appropriation or any revenues collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

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§13-2D-11. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to article fourteen, chapter thirty-one of the Code of West Virginia.

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§13-2D-12. Exemption from taxation.

The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a county court may acquire for an airport according to the provisions of this article shall be exempt from taxation by the state, or any county, municipality or other levying body, as public property, so long as the same is owned by such county.

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§13-2D-13. County court may lease appurtenances and facilities.

County courts may lease all or any part of the appurtenances and facilities of airports, including but not limited to any space in the airport terminal building or hangars, or any other areas for automobile parking, or any other areas for restaurant, hotel, or motel purposes, to any available lessee or lessees at such rentals and upon such terms and conditions as to the county courts shall seem proper. All such leases shall be for some purpose associated with airport activities.

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§13-2D-14. Construction of article.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as additional; and this article shall not be construed as requiring an election by the voters of a county prior to the issuance of bonds hereunder by such county, and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

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§13-2D-15. No notice, consent or publication required.

No notice to or consent or approval by any other county court, other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, mortgage or deed of trust under the authority of this article. No publication or notice shall be necessary to the validity of any resolution or proceeding had under this article.

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§13-2D-16. Severability.

If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.

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§13-2D-17. Public officials exempt from personal liability.

No official or member of a county court shall be personally liable on any contract or obligation executed pursuant to the authority herein contained, nor shall the issuance of bonds hereunder be considered as misfeasance in office.

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§13-2D-18. Prohibition of financial interest of public officials.

No member of a county court issuing revenue bonds under the provisions of this article shall have any financial interest, directly or indirectly, in an airport acquired or constructed pursuant to this article.

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