

## WEST VIRGINIA CODE: §13-2E-5

### **§13-2E-5. Issuance of refunding bonds; application of proceeds.**

Refunding bonds issued under this article may be exchanged for not less than a like principal amount of the revenue bonds to be refunded, or may be sold at public or private sale, or may be exchanged in part and sold in part, in such manner and upon such terms as may be determined by the governing body to be for the best interests of the public body: Provided, That such refunding bonds shall not be sold or exchanged at a price lower than a price which will show a net saving to the issuer after deducting all expenses of the refunding: Provided, however, That if the governing body determines that one of the purposes of issuing such refunding bonds is to effect the release, termination or modification of liens, restrictions, conditions or limitations imposed in connection with the bonds which are to be refunded, then such refunding bonds may be issued without the necessity of showing a net saving to the issuer, in which event such refunding bonds shall bear interest at such rate or rates as the governing body may determine, but such rate or rates shall not exceed the maximum stated rate of interest which the revenue bonds to be refunded thereby could bear if they were being issued as of the date of issuance of such refunding bonds, and such refunding bonds may not be sold or exchanged at a price which would result in a net interest cost in excess of the maximum net interest cost which the revenue bonds to be refunded could be sold or exchanged for if they were being issued as of the date of issuance of such refunding bonds.

If any such refunding bonds are to be sold, they may be issued in such principal amount as may be determined advisable by the governing body including, without limitation, the aggregate principal amount of the revenue bonds to be refunded, interest accrued and to accrue to the date or dates on which the revenue bonds being refunded are scheduled to mature or to be redeemed prior to maturity, any redemption premiums which must be paid in order to refund such outstanding revenue bonds and any costs and expenses of issuing the refunding bonds and providing for retirement of revenue bonds to be refunded. If sold, the net proceeds shall either be immediately applied to the payment or redemption and retirement of the revenue bonds to be refunded, or the net proceeds of the refunding bonds may be invested at the discretion and under the supervision of the escrow agent in whole, or in part, (a) in direct obligations issued by the United States of America or one of its agencies, (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest, or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of an accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested

money placed in the hereinafter mentioned escrow, will be sufficient to pay when due or called for redemption the revenue bonds refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bond proceeds or obligations so purchased therewith shall, and with other funds legally available to the public body for such purpose may, be deposited in escrow with the West Virginia Municipal Bond Commission or a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, to be selected by the issuer to be held in trust for the payment and redemption of the revenue bonds refunded, and such money and obligations and any reinvestment thereof shall be held in trust by such escrow agent for the payment of interest on the refunded bonds when due, and principal thereof and applicable redemption premiums, if any, when due, or upon the date or dates for which they shall have been called for redemption, or upon an earlier voluntary surrender at the option of the escrow agent; provided if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded revenue bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed by the public body as are other revenues of the enterprise. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding revenue bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds. The term "net proceeds" as used above shall mean the gross proceeds of the refunding bonds after the deduction therefrom of all accrued interest, costs and expenses incurred in connection with the authorization and issuance of the refunding bonds and the retirement of the outstanding revenue bonds, and including all costs and expenses resulting from price variations to par or otherwise incurred in the purchase of obligations for escrow and in the disposition of the refunding bonds.