WEST VIRGINIA CODE CHAPTER 13 ARTICLE 2E

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§13-2E-1. How article cited.

This article may be cited as "Revenue Bond Refunding Act."

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§13-2E-2. Definitions.

The following terms or words wherever used or referred to in this article shall have the following meaning, unless a different meaning plainly appears from the context:

The term "public body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the State of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue revenue bonds.

The term "governing body" means board, council or other body having power to borrow money on behalf of a public body.

The term "law" means any act or statutes, general, special or local, of this state, including, without being limited to, the charter of any public body.

The term "enterprise" means any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto; and for the purposes of this article "enterprise" includes the waterworks system or the sewerage system, or both said systems, resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b, article twenty, chapter eight of this code, all as the governing body shall authorize in the ordinance authorizing said severance.

The term "revenues" means all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the public body from the operation of any enterprise or arising from any enterprise, and including earnings derived from investments and bank deposits.

The term "revenue bonds" means notes, bonds, certificates or other obligations of a public body heretofore or hereafter issued and outstanding under any law and which by their terms are payable from the revenues derived by such public body from the operation of an enterprise.

The term "refunding bonds" means notes, bonds, certificates or other obligations of a public body issued pursuant to this article.

The term "holder of bonds" or "bondholder" or any similar term means any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding refunding bond or refunding bonds which shall at the time be registered other than to bearer.

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The words "net interest cost" when referring to an outstanding issue of revenue bonds to be refunded, means the total amount of interest which would accrue on such revenue bonds from the date of the refunding bonds to the respective maturity dates of the outstanding revenue bonds to be refunded, without regard to any retained options of redemption.

The words "net interest cost" when referring to a proposed issue of refunding bonds, means the total amount of interest to accrue on the refunding bonds from their date to their respective maturities, without regard to any retained options of redemption, plus the amount of any discount below par or less the amount of any premium above par at which the bonds may be sold.

The words "net effective interest rate" when referring to a proposed issue of refunding bonds, means the net interest cost of said refunding bonds divided by the product obtained by multiplying the aggregate principal amount of such refunding bonds maturing on each maturity date by the number of years from the date of the refunding bonds to their respective maturities, without regard to any retained options of redemption.

The term "certified public accountant" means an independent certified public accountant or firm of certified public accountants licensed to practice in this state.

Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

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§13-2E-3. Authority to refund.

Any public body may issue refunding bonds for the purpose of refunding all or any part of its revenue bonds now or hereafter outstanding, whether or not such revenue bonds are at the time of the refunding due or optional for redemption, under the circumstances and restrictions set forth in this article. Refunding bonds shall be payable from revenues derived from the same enterprise as the revenue bonds to be refunded except where the public body has outstanding revenue bonds payable from the revenues of an enterprise and is authorized under any other law to combine and consolidate such enterprise with another enterprise and issue revenue bonds payable from the revenues of the combined and consolidated enterprises. An issue of refunding bonds may refund part or all of one or more issues of outstanding revenue bonds: Provided, That part or all of two or more issues of outstanding revenue bonds may not be refunded under this article unless either (a) all of the issues of outstanding revenue bonds to be refunded are payable from revenues derived from the same enterprise, or (b) the public body is authorized under any other law to combine or consolidate the enterprises in question and issue revenue bonds payable from the revenues of the combined or consolidated enterprises.

Refunding bonds may be issued hereunder whenever the governing body of the public body deems it expedient and, notwithstanding any provision in this article to the contrary, may be issued as part of a series of revenue bonds issued for the purpose, in addition to such refunding, of financing the acquisition or construction of improvements, betterments, extensions or replacements to the particular enterprise, as provided by other articles of this code.

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§13-2E-4. Terms, form and execution of refunding bonds.

Refunding bonds authorized under this article may be issued in one or more series; may bear such date or dates; may mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, not exceeding forty years from their respective dates; may bear interest at such rate or rates; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration and conversion privileges; may be executed in such manner; may be payable in such medium of payment, at such place or places; may be subject to such terms of redemption, with or without a premium; may be declared or become due before the maturity date; may provide for the replacement of mutilated, destroyed, stolen or lost bonds; may be authenticated in such manner and upon compliance with such conditions; and may contain such other terms and covenants, as may be determined by the governing body in the proceedings authorizing the refunding bonds. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

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§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

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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.

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§13-2E-6. Determination of governing body to be conclusive.

The determination by the governing body of any public body issuing refunding bonds under this article that the limitations herein imposed upon the issuance of refunding bonds have been met, shall be conclusive: Provided, however, That such public body shall have obtained from an independent certified public accountant a certification that the amount of saving stated to be achieved by the refunding shall in fact be served, based upon his review, comparison and analysis of the net interest cost in dollars of the refunding bonds and the net interest cost in dollars of the bonds to be refunded.

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§13-2E-7. Authorization for issuance.

Refunding bonds and all acts required to be authorized hereunder shall be authorized in the manner in which the bonds to be refunded were authorized and issued: Provided, That refunding bonds of a system resulting from the severance of a combined municipal waterworks and sewerage system shall to the extent applicable be authorized and issued under the terms and provisions of law, including, but not limited to, interest rates and net interest costs, under which revenue bonds of such resulting system would be authorized and issued.

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§13-2E-8. Authority for escrow agreement.

The governing body of any public body shall have power to enter into such escrow agreements and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of principal of and interest and redemption premiums on the revenue bonds refunded.

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§13-2E-9. Call of revenue bonds for redemption.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the governing body of the public body shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state sinking fund commission or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose.

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§13-2E-10. Security provisions.

Refunding bonds shall be special obligations of the public body and shall be payable solely from and secured by a lien upon the gross revenues or net revenues of the enterprise, as shall be more fully described in the ordinance or resolution authorizing the issuance of refunding bonds, and the ordinance or resolution authorizing such refunding bonds shall provide for a special fund into which there shall be pledged a fixed amount or a fixed proportion of such revenues which shall be sufficient to pay the principal of and interest on the refunding bonds as the same become due.

In order to assure payment of the principal and interest on any refunding bonds it shall be the duty of the governing body of the public body to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges for the services of such enterprise as shall be necessary to produce revenues sufficient, after making due and reasonable allowance for contingencies and for a margin of error in estimates, to pay at all times principal of and interest on the refunding bonds as the same become due, to pay current expenses of operation and maintenance, to provide for depreciation, to provide for reserves for any of the foregoing, to comply in all respects with any contract or agreement with bondholders set forth in the ordinance or resolution authorizing such refunding bonds, and to meet any other obligations of the public body which by their terms are charges, liens, or encumbrances upon the revenues of such enterprise.

The ordinance or resolution authorizing any refunding bonds may contain such covenants with the holders of the refunding bonds as to the efficient management and operation of the enterprise; the collection, keeping and disposition of the revenues of the enterprise; the issuance of additional refunding bonds or revenue bonds; the carrying of insurance on such enterprise and the disposition of insurance proceeds; the keeping of books and records and the auditing thereof; the inspection by bondholders at reasonable times of the enterprise and the records, accounts and data of the public body relating thereto; limitations upon the sale or other disposition of integral parts of the enterprise; the discontinuance of the services and facilities of the enterprise upon failure to pay for such services and facilities; the appointment and duties of a trustee; the rights, liabilities, powers and duties arising upon the breach by the public body of any covenants, conditions or obligations contained in the ordinance or resolution authorizing the issuance of such refunding bonds; remedies of bondholders upon default in the payment of the principal of or interest on any refunding bonds, including the appointment by a court of competent jurisdiction of a receiver for the operation and management of the enterprise and the collection and disbursement of the revenues thereof, but such receiver or any court having jurisdiction in the matter shall not be permitted to sell, mortgage or otherwise dispose of any assets of the enterprise and useful in its operation or cause any of such assets to be sold, mortgaged or otherwise disposed of; and any other conditions, acts or pertinent matters as may be deemed necessary or proper by the governing body of the public body to assure efficient operation of the enterprise, payment of the refunding bonds and marketability of the refunding bonds upon favorable terms. Any agreement or covenant contained in the ordinance or resolution authorizing such refunding bonds shall constitute a contract with the holders of such

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refunding bonds.

All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number, date or time of sale, execution or delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the ordinance or resolution authorizing the issuance of such refunding bonds.

Nothing in this section or in any other section of this article shall be deemed in any way to alter the terms of any agreements made with the holders of any outstanding revenue bonds of the public body, or to authorize the public body to alter the terms of any such agreements, or to impair, or authorize the public body to impair, the rights and remedies of any creditors of the public body.

Nothing in this section or in any other section of this article shall be deemed in any way to authorize any public body to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the Constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or a debt.

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§13-2E-11. Bonds payable solely from revenues of enterprise.

No recourse shall be had for the payment of the refunding bonds, or interest thereon, or any part thereof, against the General Fund of any public body, nor shall the credit or taxing power of any public body be deemed to be pledged thereto.

The refunding bonds, and interest thereon, shall not be a debt of the public body, nor a charge, lien or encumbrance, legal or equitable, upon any property of the public body, nor upon any income, receipts, or revenues of the public body other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the public body is under no obligation to pay the same, except from said revenues.

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§13-2E-12. Tax exemption; exceptions.

The refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate and transfer taxes.

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§13-2E-13. Validity of bonds.

Refunding bonds bearing the signatures of officers of the public body in office on the date of the signing thereof shall be valid and binding obligations of the public body for all purposes, notwithstanding that before the delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be officers of the public body, the same as if such persons had continued to be officers of the public body until after the delivery thereof. The ordinance or resolution authorizing any refunding bonds may provide that such refunding bond may contain a recital that such refunding bond is issued pursuant to this article, and any refunding bond containing such recital under authority of any such ordinance or resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this article.

Where any refunding bonds have been heretofore authorized by any public body which would have been valid under and in compliance with the provisions of this article had this article been in existence at the time of the authorization of such refunding bonds, such refunding bonds if heretofore issued, and if not yet issued then such refunding bonds when they shall have been issued, and the proceedings authorizing their issuance, are hereby validated, ratified and confirmed and declared to be binding and enforceable obligations in accordance with their terms.

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§13-2E-14. Article complete authority for refunding bonds; effect on other laws; liberal construction.

This article constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts or things by any governing body of any public body, or any board, officer, commission, department, agency, or instrumentality of the state or any public body shall be required to issue any refunding bonds or to do any act or perform anything under this article, except as may be prescribed in this article. The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law. This article is remedial in nature and shall be liberally construed.

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§13-2E-15. Severability.

If any one or more provisions of this article or the applicability thereof to any persons or circumstances are ever held by a final decision of a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision or provisions, application or applications of this article, and to this end, the provisions of this article are declared to be severable.

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