WEST VIRGINIA CODE CHAPTER 13 ARTICLE 2H

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§13-2H-1. Short title.

This article may be known as and may be cited as the "Lottery Revenue Bond Act".

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§13-2H-2. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Board of education" means a county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, and is receiving lottery revenues.

(b) "Governmental body" means any municipality, county or board of education that receives lottery revenues.

(c) "Lottery revenues" means the funds distributed to a governmental body pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code; section one thousand four hundred eight, article twenty-two-b of said chapter, or section twenty-seven, article twenty-two-c of said chapter or section twenty-two, article twenty-five, chapter twenty-nine of this code.

(d) "Lottery revenue bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by a governmental body, the proceeds of which are used directly or indirectly to finance or refinance public projects pursuant to this article and are secured by the lottery revenues of the governmental body.

(e) "Lottery revenue fund" means the fund required to be established by the governmental body to deposit lottery revenues if the governmental body issues lottery revenue bonds.

(f) "Public project" means any project approved by a governmental body to acquire, improve, renovate, extend, enlarge, increase, repair, construct, equip, maintain and operate public buildings, structures, fixtures, property, public infrastructure and appurtenant facilities of any type or types for which the governmental body is permitted by law to expend public funds including, but not limited to, those projects as defined in section one, article sixteen, chapter eight of this code. Additionally, a public project would include all roads and transportation infrastructure.

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§13-2H-3. Powers conferred on counties and municipalities.

In addition to any other powers which a county or municipality may now have, each county, by and through its county commission, and each municipality, by and through its council or other governing body in lieu thereof, may: (a) Acquire, whether by purchase, construction, gift, lease or otherwise, one or more public projects, or additions thereto, which shall be located within this state; and (b) issue and deliver lottery revenue bonds secured by lottery revenues to finance or refinance public projects.

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§13-2H-4. Issuance of lottery revenue bonds by county.

(a) The county commission may issue lottery revenue bonds of the county as provided in this section to finance or refinance all or part of a public project and pledge all or any part of the lottery revenues for the payment of the principal of and interest on such lottery revenue bonds and for reserves therefor: Provided, That a county commission receiving lottery revenues pursuant to the provisions of subdivision (3), subsection (c), section twenty-seven, article twenty-two-c, chapter twenty-nine of this code may only pledge fifty percent of the lottery revenues to the payment of principal and interest on the lottery revenue bonds and for reserves therefor. Any pledge of lottery revenue funds for lottery revenue bonds is a prior and superior charge on the lottery revenues and Lottery Revenue Fund over the use of any of the moneys to pay for the cost of any of the purposes on a cash basis.

(b) The lottery revenue bonds may be authorized and issued by the county commission to finance or refinance, in whole or in part, public projects in an aggregate principal amount not exceeding the amount which the county commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the lottery revenues and the Lottery Revenue Fund.

A county commission issuing lottery revenue bonds shall establish a fund to deposit lottery revenues and call such fund the Lottery Revenue Fund. The county commission shall thereafter deposit all lottery revenues pledged to the payment of principal and interest of lottery revenue bonds into the Lottery Revenue Fund.

(c) The issuance of lottery revenue bonds may be authorized by an order of the county commission. The lottery revenue bonds shall: (1) Bear a date or dates; (2) mature at a time or times not exceeding forty years from their respective dates; (3) be in a specific denomination; (4) be in a registered form with exchangeability and interchangeability privileges; (5) be payable in a medium of payment and at a place or places within or without the state; (6) be subject to terms of prior redemption at those prices; and (7) may have such other terms and provisions as determined by the county commission. The lottery revenue bonds shall be signed by the president of the county commission under the seal of the county commission, attested by the clerk of the county commission. Lottery revenue bonds may be sold in a manner as the county commission determines is for the best interests of the county.

(d) The county commission may enter into: (1) Trust agreements with banks or trust companies within or without the state and in trust agreements or orders authorizing the issuance of bonds; (2) valid and legally binding covenants with the holders of the lottery revenue bonds as to the custody, safeguarding and disposition of the proceeds of the lottery revenue bonds, the moneys in the Lottery Revenue Fund, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, or different issues of lottery revenue bonds by the county commission under the provisions of this section; (3) agreements as to such provisions as payment, term, security, default and remedy provisions as the county commission shall consider necessary or desirable; and (4) agreements as to any other matters or provisions which are considered necessary and advisable by the county

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commission in the best interests of the county and to enhance the marketability of such lottery revenue bonds.

(e) The lottery revenue bonds are negotiable instruments under the Uniform Commercial Code of this state and are not obligations or debts of the state or of the county issuing the bonds and the credit or taxing power of the state or county may not be pledged therefor, but the lottery revenue bonds may be payable only from the revenue pledged therefor as provided in this section.

(f) A holder of lottery revenue bonds has a lien against the lottery revenues and the Lottery Revenue Fund for payment of the lottery revenue bond and the interest thereon and may bring suit to enforce the lien.

(g) A county commission may issue and secure additional bonds payable out of the lottery revenues and the Lottery Revenue Fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission and payable from the Lottery Revenue Fund.

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§13-2H-5. Issuance of lottery revenue bonds by municipality.

(a) A municipality may issue lottery revenue bonds as provided in this section to finance or refinance all or part of a public project and pledge all or any part of the lottery revenues for the payment of the principal of and interest on the lottery revenue bonds and for reserves therefor: Provided, That a municipality receiving lottery revenues pursuant to the provisions of subdivision (4), subsection (c), section twenty-seven, article twenty-two-c, chapter twenty-nine of this code may only pledge fifty percent of the lottery revenues to the payment of principal and interest on the lottery revenue bonds and for reserves therefor. Any pledge of lottery revenue funds for lottery revenue bonds is a prior and superior charge on the lottery revenues and Lottery Revenue Fund over the use of any of the moneys to pay for the cost of any of such purposes on a cash basis.

(b) The lottery revenue bonds may be authorized and issued by the municipality to finance or refinance, in whole or in part, public projects in an aggregate principal amount not exceeding the amount which the municipality determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the lottery revenues and the Lottery Revenue Fund. A municipality issuing lottery revenue bonds shall establish a fund to deposit lottery revenues and call the fund the Lottery Revenue Fund. The municipality shall thereafter deposit all lottery revenues pledged to the payment of principal and interest of lottery revenue bonds into the Lottery Revenue Fund.

(c) The issuance of lottery revenue bonds may be authorized by an ordinance of the municipality and such lottery revenue bonds shall be issued pursuant to the provisions of article sixteen, chapter eight of this code.

(d) The lottery revenue bonds are negotiable instruments under the Uniform Commercial Code of this state and may not be considered to be obligations or debts of the state or of the municipality issuing the bonds and the credit or taxing power of the state or municipality may not be pledged therefor, but the lottery revenue bonds may be payable only from the revenue pledged therefor as provided in this section.

(e) A holder of lottery revenue bonds has a lien against the lottery revenues and the Lottery Revenue Fund for payment of the lottery revenue bond and the interest thereon and may bring suit to enforce the lien.

(f) A municipality may issue and secure additional bonds payable out of the lottery revenues and the Lottery Revenue Fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the municipality and payable from the Lottery Revenue Fund.

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§13-2H-6. Issuance of lottery revenue bonds by board of education.

(a) A board of education may issue and deliver lottery revenue bonds secured by lottery revenues to finance or refinance public projects. The board of education may issue lottery revenue bonds of the school district as provided in this section to finance or refinance all or part of a public project and pledge all or any part of the lottery revenues for the payment of the principal of and interest on lottery revenue bonds and for reserves therefor. Any pledge of lottery revenue funds for lottery revenue bonds is a prior and superior charge on the lottery revenues and Lottery Revenue Fund over the use of any of the moneys to pay for the cost of any of such purposes on a cash basis.

(b) Lottery revenue bonds may be authorized and issued by the board of education to finance or refinance, in whole or in part, public projects in an aggregate principal amount not exceeding the amount which the board of education determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the lottery revenues and the Lottery Revenue Fund. A board of education issuing lottery revenue bonds shall establish a fund to deposit lottery revenues and call the fund the Lottery Revenue Fund. The board of education shall thereafter deposit all lottery revenues pledged to the payment of principal and interest of lottery revenue bonds into the Lottery Revenue Fund.

(c) The issuance of lottery revenue bonds may be authorized by an order of the board of education and the lottery revenue bonds shall: (1) Bear a specific date or dates; (2) mature at such time or times not exceeding forty years from their respective dates; (3) be in a specific denomination; (4) be in registered form with exchangeability and interchangeability privileges; (5) be payable in the medium of payment and at a specific place or places within or without the state; (6) be subject to terms of prior redemption at specific prices; and (7) have such other terms and provisions as determined by the board of education. The lottery revenue bonds shall be signed by the president of the board of education under the seal of the board of education, attested by the secretary of the board of education. Lottery revenue bonds may be sold in the manner as the board of education determines is for the best interests of the school district.

(d) The board of education may enter into: (1) Trust agreements with banks or trust companies, within or without the state; (2) trust agreements or the orders authorizing the issuance of the bonds; (3) valid and legally binding covenants with the holders of the lottery revenue bonds as to the custody, safeguarding and disposition of the proceeds of the lottery revenue bonds, the moneys in the Lottery Revenue Fund, sinking funds, reserve funds or any other moneys or funds; (4) agreements as to the rank and priority, if any, or different issues of lottery revenue bonds by the board of education under the provisions of this section; (5) agreements as to the provisions of payment, term, security, default and remedy provisions as the board of education may consider necessary or desirable; and (6) agreements as to any other matters or provisions which are considered necessary and advisable by the board of education in the best interests of the school district and to enhance the marketability of such lottery revenue bonds.

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(e) The lottery revenue bonds are negotiable instruments under the Uniform Commercial Code of this state and may not be considered to be obligations or debts of the state or of the board of education issuing the bonds and the credit or taxing power of the state or board of education may not be pledged therefor, but the lottery revenue bonds may be payable only from the revenue pledged therefor as provided in this section.

(f) A holder of lottery revenue bonds has a lien against the lottery revenues and the Lottery Revenue Fund for payment of the lottery revenue bond and the interest thereon and may bring suit to enforce the lien.

(g) A board of education may issue and secure additional bonds payable out of the lottery revenues or Lottery Revenue Fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the board of education and payable from the Lottery Revenue Fund.

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§13-2H-7. Use of proceeds from sale of bonds.

(a) The proceeds from the sale of any bonds issued under authority of this article may be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest received in any sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds are not needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds or held in reserve for the payment thereof.

(b) The costs of any public project shall be considered to include the following:

(1) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, the removal or containment of, or the restoration of soil or groundwater affected by environmental pollution, environmental remediation, the acquisition of equipment and site clearing, grading and preparation;

(2) Financing costs, including, but not limited to, any interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(3) Real property acquisition costs;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(5) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by governmental body employees in connection with the implementation of a project;

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining and costs for utility relocation; and

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the implementation of project plans.

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§13-2H-8. Redemption of bonds.

The lottery 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 governmental body and at such redemption prices or premiums, which terms shall be stated in the bond.

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§13-2H-9. Refunding bonds.

Any lottery revenue bonds issued hereunder and at any time outstanding may, at any time and from time to time, be refunded by a county, municipality or board of education by the issuance of its refunding bonds in such amount as the governmental body may determine necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the public project; and any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the bonds to be refunded 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 any bonds so to be refunded may 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 lottery revenues, the Lottery Revenue Fund or from other moneys or the principal of and interest on or other investment yield from investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and are subject to the provisions contained in section five, six or seven of this article, as applicable.

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§13-2H-10. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire by construction or purchase, or both, or finance one or more public projects or additions thereto by the issuance and delivery of lottery revenue bonds in which case such governmental bodies shall jointly exercise all the rights, authority, power and duties herein conferred upon a county commission, a municipality or a board of education when acting singly and they shall also be subject to the same limitations, restrictions and conditions as are herein imposed on a singly governmental body in connection with the acquisition or finance of a public project. Notwithstanding the signing and sealing requirements set forth in section four, five or six of this article, one of such governing bodies may sign and seal bonds issued pursuant to this article on both its own behalf and on behalf of all other participating governing bodies, and signature in the manner set forth in the said section four, five or six, as applicable, by one governing body shall be effect as to all other participating governing bodies. The respective governing bodies, acting jointly, may also provide by agreement among themselves, any other terms and conditions of such joint participation.

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§13-2H-11. Exemption from taxation.

The lottery revenue bonds issued pursuant to this article and the income therefrom are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof, except inheritance, estate and transfer taxes; and the real and personal property which a county commission, a municipality or board of education may acquire pursuant 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, municipality or board of education.

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§13-2H-12. Construction of article.

This article may not be construed as a restriction or limitation upon any powers which a county, municipality or board of education might otherwise have under any laws of this state, but shall be construed as alternative or additional. This article may not be construed as requiring an election by the voters of a county, municipality or board of education prior to the issuance of bonds hereunder by a county, municipality or board of education and may 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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