WEST VIRGINIA CODE CHAPTER 13 ARTICLE 3

WV Legislature

§13-3-1. Commission continued.

The state sinking fund commission is hereby continued in all respects as heretofore constituted under prior provisions of this article, but is hereby designated as the West Virginia Municipal Bond Commission.

WV Legislature

§13-3-2. Composition of commission; terms of appointment; vacancies; removal from office.

(a) The commission shall be composed of five members as follows: (1) The Auditor of the state, by virtue of his office; (2) the treasurer of the state, by virtue of his office; (3) the State Tax Commissioner, by virtue of his office; and (4) two residents of the state appointed by the Governor by and with the advice and consent of the Senate. Of the two appointed members, one shall be, or shall have been, the mayor of a municipality, and one shall be, or shall have been, a member of a county commission: Provided, That if such mayor or member of a county commission is not presently serving in such position, he shall have served in such position within the six years preceding the term for which such member is to be appointed. No more than one of the members appointed by the Governor may belong to the same political party.

(b) The appointed members of the commission shall serve overlapping terms of four years each and until their respective successors have been appointed and qualified, except for the original appointments, one member shall be appointed for a term of four years and until his successor has been appointed and qualified, one member shall be appointed for two years and until his successor has been appointed and qualified. Each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(c) Vacancies shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and such appointment shall be made within sixty days of the occurrence of such vacancy.

(d) No member of the board appointed by the Governor may be removed from office except for official misconduct, incompetency, neglect of duty or gross immorality.

WV Legislature

§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

(a) The Tax Commissioner or his or her designee shall be chair of the commission.

(b) The members of the commission shall appoint a chief administrative officer and may fix his title and duties. Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commission shall have the authority to set the compensation of the chief administrative officer. The chief administrative officer shall serve as secretary to the board and treasurer of the commission. The chair may designate a board member to serve as secretary in the absence of the chief administrative officer. The chair is authorized with the approval of the commission, to employ other employees and consultants as the commission deems advisable and fix their compensation and prescribe their duties.

(c) Appointed members of the commission shall be paid $50 for each day or substantial portion thereof that they are engaged in the work of the commission. Each member of the commission may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties on behalf of the commission.

(d) The commission shall hold at least three meetings in each fiscal year, one of which meetings shall be within sixty days of the end of the fiscal year and shall be the annual meeting. The meetings shall be held on dates and at places prescribed by the chair. Additional meetings may be held at the call of the chair or upon the written request of three members at such time and place as designated in such call or request. Three members of the commission constitute a quorum.

(e) The chair with the consent of the commission is authorized to provide or designate legal advisory services to the commission.

WV Legislature

§13-3-4. Executive committee; powers and duties.

The State Tax Commissioner, the State Treasurer, and the State Auditor constitute the executive committee of the Municipal Bond Commission. The executive committee is vested with all the powers of the commission when it is not in session, except that the executive committee may not overrule, reverse or disregard any action of the full commission. Action of the executive committee shall be taken by resolution adopted by a majority of the executive committee. The chairman may call meetings of the executive committee at any time.

WV Legislature

§13-3-5. Officer and employee bonds.

The chief administrative officer and the employees designated by the commission shall furnish bonds in such form and in such amounts as the commission shall, from time to time, determine. The costs of such bonds shall be paid by the commission and such bonds shall be filed in the same office as are the bonds of state officers. The Attorney General's approval of all bonds required by this section shall be obtained.

WV Legislature

§13-3-5a. Costs and expenses; fees for services.

The commission shall set a schedule of fees to be charged for the commission's services, sufficient to meet all expenses of the commission. These fees shall be assessed on the basis of debt service paid by the commission for each issuer and shall not exceed one half of one percent of the debt service paid, but in no case shall the fee exceed $2,000 per issue or series per annum. The commission may assess additional fees, sufficient to recover the expenses of special projects undertaken to benefit the users of the commission's services, against specific issuers who are the beneficiaries of such projects.

All sums collected by the commission for its services shall be deposited in a separate account at the State Treasury to the credit of the Municipal Bond Commission, and no expenditures for purposes of this article are authorized from collections except in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Any amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes as appropriated by the Legislature. No expenses incurred under this article shall be a charge against the General Funds of this state.

WV Legislature

§13-3-6. Powers and duties of commission.

(a) The commission shall serve as fiscal agent for all issuers of general obligation bonds issued by the counties, municipalities, and school districts of the State of West Virginia when the commission is specifically named as the fiscal agent by statute.

(b) The commission shall serve as fiscal agent for all issuers of revenue bonds issued by the counties, municipalities, and school districts of this state when the commission is specifically named as the fiscal agent by statute.

(c) The commission shall serve as fiscal agent for the issuers of revenue bonds issued by the State of West Virginia through its departments, commissions, boards, or agencies, when the commission is specifically named as the fiscal agent by statute.

(d) The commission may serve as fiscal agent for the issuer of other public purpose revenue bond issues when so provided by bond ordinance.

(e) The commission may agree to serve as paying agent for all issuers when so provided by bond ordinance.

(f) The commission may conduct business by telephonic conference when necessary.

(g) The commission is hereby granted, has and may exercise all powers necessary or appropriate to effectuate the purposes of this article.

WV Legislature

§13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.

(a) Notwithstanding any provisions of this code to the contrary, the commission may invest funds under its control in the following classes of securities and not otherwise:

(1) Securities of the United States or any agency thereof which are guaranteed by or for which the full faith and credit of the United States is pledged for the payment of the principal and interest;

(2) General obligations of this state or any of its agencies, boards or commissions;

(3) General obligations of any county, municipality or school district in this state;

(4) Pools of investment operated by the West Virginia Board of Investments provided that their investments are limited to the above named securities, and provided that securities purchased for these pools following the date of the enactment of this article shall not have maturities greater than five years in length; and

(5) Repurchase agreements or similar banking arrangements with a member bank of banks of the federal reserve system or a bank, the deposits of which are insured by the federal deposit insurance corporation, or its successor: Provided, That such investments shall only be made to the extent insured by the federal deposit insurance corporation or to the extent that the principal amount thereof shall be fully collateralized by direct obligations of or obligations guaranteed by the United States of America.

(b) Securities purchased or held under the provisions of this article may be sold or exchanged for other securities: Provided, That: (1) No security shall be purchased, sold or exchanged without the concurrence or ratification of a majority of all members of the commission; (2) no security shall be purchased at a price above, nor sold or exchanged at a price below, its prevailing fair market value; (3) no security shall be purchased, sold or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto; (4) no security purchased, sold or exchanged shall benefit any member or employee of the commission; and (5) no security shall be received in exchange which does not comply with the requirements of this article.

(c) The commission shall record all pertinent information related to any purchase, sale or exchange of securities and make such information available for public inspection during normal office hours of the commission.

(d) Funds from several or all accounts may be combined for investment and any interest earned shall be prorated and credited quarterly to the various contributing accounts on the basis of amount thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle.

WV Legislature

(e) All securities purchased by the commission as an investment for the funds shall remain in the custody of the state Board of Investments until the same are sold, exchanged, retired or mature and are paid.

WV Legislature

§13-3-7a. Escrowing bond issues.

(a) All bond issues for which the commission is serving as fiscal agent shall be considered to have been canceled and paid in advance of their due date or date of redemption if there shall have been deposited with the commission either:

(1) Moneys sufficient to pay when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds; or

(2) Securities of a quality in which the commission is authorized by law to invest moneys under its control, the principal of and interest on which will provide moneys sufficient to pay when and as due at maturity or prior redemption all amounts of principal, redemption premium, if any, and interest payable on such bonds.

(b) The moneys and securities held by the commission pursuant to this section shall be held by the commission in trust and irrevocably dedicated solely to the payment of principal or redemption price, if applicable, of and interest on the bonds: Provided, That this action shall be taken solely at the direction of the issuer. Following such irrevocable commitment of moneys and securities in trust, funds on account with the commission for said bonds which are surplus may be immediately returned to the issuer.

WV Legislature

§13-3-8. Notification by issuer of bond sale.

For any issue for which the commission shall serve as fiscal agent, either by statute or provisions of bond ordinance, or for any issue which refunds an issue for which the commission is currently serving as fiscal agent, the issuer shall notify the commission of the issuance of such bonds not more than five days after closing, and provide the commission with a copy of the official statement and bond ordinance or resolution not more than forty-five days following closing.

WV Legislature

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

(a) Deposit of funds. -- All tax receipts and interest belonging to the counties, municipalities or school districts and earmarked for the purpose of amortizing bonded indebtedness, shall be, by the treasurer or collector thereof, forwarded to the commission at least quarterly to be deposited in the State Treasury to the credit of the Municipal Bond Commission: Provided, That all funds from the prior fiscal year shall be forwarded to the commission not later than the following thirtieth day of September.

(b) Insufficient deposit. -- Whenever the amount deposited for any issuer is not sufficient to meet the interest or principal due, it shall be the duty of the treasurer or collector of such issuer, upon being notified of that fact by the commission, to immediately remit all funds in his possession that have been earmarked by the issuer for the purpose of amortizing bonded indebtedness plus such additional funds as are necessary to meet the interest or principal due.

(c) Withdrawal of additional funds. -- If an issuer has remitted to the commission funds not earmarked for the purpose of amortizing bonded indebtedness, all or a portion of such funds may be withdrawn by the issuer upon sixty days' written notice to the commission: Provided, That such withdrawal shall neither create a deficit in the issuer's account with the commission nor be in conflict with terms of the bond issue.

(d) Payment of taxes. -- Any taxes to provide for the payment of principal, creation of a reserve or sinking fund, or for the payment of interest on bonds by any county, municipality or school district which shall be collected by any state officer, shall be paid by such officer to the commission to be at once applied to the payment of the debt of the county, municipality or school district and the fact of such application of such fund shall be reported by the Auditor to the treasurer or collector of such issuer, which report shall be a receipt for the amount therein named.

(e) Municipal bond commission fund. -- The State Auditor and the State Treasurer shall carry an account to be known as the Municipal Bond Commission fund. All deposits shall be carried as a part of such fund.

(f) Deposit of collections. -- The commission shall deposit all collections and receipts with the treasurer daily.

WV Legislature

§13-3-10. Accounts of bond issues; annual statements, canceled bonds and coupons.

The commission shall keep separate accounts for each bond issue showing in detail all receipts and disbursements: Provided, That accounts of one issuer for the same purpose may be consolidated into one account. Within thirty days after the end of the fiscal year, the commission shall submit to each issuer a statement of all receipts and disbursements of the preceding fiscal year. At the same time, the commission shall surrender to each issuer coupons and bonds which have been paid and canceled or certificates of destruction as provided for in section twelve of this article.

WV Legislature

§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

The commission shall, annually, at least thirty days before the time for making up the estimate for levy purposes, render to each political subdivision having outstanding general obligation bonds, a statement showing the levy required to pay the interest on and provide for the retirement of the subdivision's outstanding general obligation bonds.

In determining the levy required, the commission shall be governed by the terms of section thirty-four or section thirty-five, article one of this chapter: Provided, That the commission may augment the levy by a reasonable amount to provide for delinquencies and exonerations; and the commissioner may include in the estimate the principal and interest due on bond issues in July, August and September of the following fiscal year. For the purposes of this section, the amount of any moneys, not earmarked for amortizing bonded indebtedness, but which was forwarded by the issuer to the commission for the purpose of meeting principal and interest due under section nine of this article, shall be considered a deficiency for a prior year.

WV Legislature

§13-3-12. Destruction of canceled bonds and coupons.

Any canceled bonds and interest coupons of any issue for which the commission acts as fiscal agent or paying agent may be destroyed in the discretion of the commission by one of the two methods described herein below.

Method I -- The commission shall maintain a permanent record for the purpose of recording the destruction of bonds and coupons, showing the following: (1) With respect to bonds, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount; and (2) with respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After recording the specified information, the commission shall have the canceled bonds and coupons destroyed by either burning or shredding, in the presence of the chairman of the commission and any three commission members, each of whom shall certify that he saw the canceled bonds and coupons destroyed. Such certificates shall be made a part of the permanent record. Canceled bonds or coupons shall not be destroyed until after one year from the date of payment.

Method II -- The commission may contract with any bank or trust company acting as paying agent or copaying agent for a bond issue for the destruction of bonds and interest coupons which have been canceled by the paying agent. The contract shall require that the paying agent give the commission a written certificate containing the same information required by Method I. The certificates shall be made part of the permanent record book of the commission. Each contract shall also require that the paying agent be responsible for proper payment and disposition of all bonds and coupons, and for any duplicate payments to unauthorized persons and nonpayment to authorized persons occurring as a result of destruction of bonds or coupons under this section. In addition, the commission may require the paying agent to submit an indemnity bond, in an amount to be determined by the commission, to assure performance of the duties specified in this section. Canceled bonds or coupons may not be destroyed until one year from the date of payment.

WV Legislature

§13-3-13. Substitute paying agents.

The commission may appoint a new paying agent on any issue for which the commission acts as fiscal agent, in the event of the insolvency, threat of insolvency, malfeasance, misfeasance, incompetence, resignation, or discontinuance from business of the paying agent or in the case of discontinuance of the place of payment as designated by the terms of such bonds. Upon appointment of a substitute paying agent, the commission shall publish notice of such action as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the former paying agent had residence. Upon designation of another place of payment, publication of notice shall be made in the county in which was located the former place of payment.

WV Legislature

§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.

Any funds of a political subdivision or of any of the agencies, boards, commission or departments of the State of West Virginia raised by levy, sale of bonds or otherwise and which cannot be used within a reasonable time may be transferred to the Municipal Bond Commission. Any funds so transferred shall be invested by the commission in accordance with the provisions of this article. Any such funds so transferred may be withdrawn by the public body which transferred the same as authorized by this article upon sixty days' notice in writing to the commission.

WV Legislature

§13-3-15. Reports of commission.

The commission shall prepare a complete and full report of its operations and investments at the close of each fiscal year and furnish a copy thereof to the Governor, President of the Senate, Speaker of the House of Delegates and the Legislative Auditor on or before the first day of the next regular session of the Legislature. Copies of the report shall be available upon request for a reasonable fee to any citizen of the state: Provided, That such report shall be available for public inspection during regular office hours of the commission.

WV Legislature