WEST VIRGINIA CODE CHAPTER 13

WV Legislature

§13-1-1. Political divisions authorized to issue and sell bonds.

Any county, by and through its county court, either for and on behalf of the county or for and on behalf of any magisterial district, or group of magisterial districts therein; any municipal corporation, by and through its council or other governing body in lieu thereof; or any school district, or any independent school district, by and through its Board of Education or other fiscal body in lieu thereof, may issue and sell its bonds, in the manner and subject to the limitations and conditions hereinafter contained in this article.

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§13-1-1a. Exemption from interest rate ceilings.

Notwithstanding any other provision in this code to the contrary, any municipality, county or state agency shall be free of interest rate restrictions when obtaining loans from the farmers home administration, housing and urban development and the economic development authority where such loans are made from federal moneys and are made for public projects. It is the intention of the Legislature that the political subdivisions of this state take maximum possible advantage of federal programs and financing alternatives where such would be in the best interests of this state.

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§13-1-2. Purposes for which bonds may be issued.

Debt may be incurred and bonds issued under this article for the purpose of acquiring, constructing and erecting, enlarging, extending, reconstructing or improving any building, work, utility or undertaking, or for furnishing, equipping and acquiring or procuring the necessary apparatus for any building, work, improvement or department, or for establishing and maintaining a library or museum for the public use, or a building or structure for educational purposes, or acquiring a recreation park for the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas, auditoriums, exhibition halls and theaters, or for other similar corporate purpose, or for the acquiring, constructing, maintaining, repairing, improving public roads and transportation facilities, for which the political division is authorized to levy taxes or expend public money. But no bonds shall be issued for the purpose of providing funds for the current expenses of any body or political division. Interest accruing during the construction period, that is to say, the time when an improvement is under construction and six months thereafter, shall be deemed a part of the cost of the improvement, and shall not be deemed current expenses. All engineering and inspection costs, including a proper proportion of the compensation, salaries and expenses of the engineering staff of the political division properly chargeable to any work or improvements, as determined by the governing body, or the estimated amount of such costs, shall be deemed part of the cost of an improvement. All costs and estimated costs of the issuance of bonds shall be deemed a part of the cost of the work or improvement, or of the property, or of the carrying out of the purposes for which such bonds are to be issued. The power to acquire or construct any building, work or improvement as herein provided shall be deemed to include the power to acquire the necessary lands, sites and rights-of-way therefor.

Bonds may also be issued by any municipality having a population of fifty thousand or more or by any county for the purpose of acquiring land and constructing a building or buildings for use and occupancy as a college. The proposal for such a bond issue shall contain a provision that there shall be created a commission or committee for the purpose of operating the building or buildings and for renting the same for an amount sufficient to pay the interest and sinking fund on the bonds proposed to be issued, and shall contain a further provision that in the event a sufficient amount is not realized from rent or rents for the purpose of meeting the debt service, then the city or county shall lay a levy for such purpose in an amount sufficient within the constitutional and statutory limitation to pay the interest and principal on such bonds as the same become due and payable. The proposal may also contain a provision that when the bonds and the interest thereon shall have been paid, then the title to the land and the building or buildings situated thereon may be transferred to the college to which the same have been rented.

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§13-1-3. Amount and purpose of indebtedness for which bonds may be issued.

No political division authorized by this article to issue bonds, except county boards of education, shall by any bond issue, become indebted to an amount, including all other indebtedness, exceeding two and one-half percent of the value of the taxable property therein, as shown by the last assessment thereof, for state and county purposes, next prior to the issuing of such bonds: Provided, That any county for the erection and equipment of a courthouse and/or jail for such county, with funds borrowed from the government of the United States or any governmental agency, federal or state, and any municipal corporation of three hundred inhabitants or more, for the purpose of grading, paving, sewering, and otherwise improving or reimproving its streets and alleys, or for establishing and maintaining a library or museum for the public use, or a building or structure for educational purposes, or acquiring a recreation park for the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas, Auditoriums, exhibition halls and theaters, may become indebted and issue bonds in an additional sum not exceeding two and one-half percent of the value of the taxable property therein, ascertained as aforesaid: Provided, however, That no county board of education authorized by this article to issue bonds, shall, by any bond issue, become indebted, in any manner, or for any purpose, to an amount, including all other indebtedness, in the aggregate, exceeding five percent on the value of the taxable property therein, in the county school district to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness, in the manner provided by the "School Bond Amendment," as ratified.

The term "sewering" as used herein shall be treated in a comprehensive sense, so as to include all mains, laterals, connections, traps, incinerating and disposal plants, and other necessary and convenient accessories to a modern sanitary and efficient sewerage system and shall include storm sewers.

The county court of any county is hereby authorized and empowered to negotiate and sell to the government of the United States or to any governmental agency, federal or state, at private sale, at not less than par any bonds issued for the purpose of erecting and equipping a courthouse or other public buildings for such county, under and by virtue of this article, without first offering them for sale at public auction, or to any other person or agency.

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§13-1-4. Bond issue proposal to be submitted to voters; election order.

No debt shall be contracted or bonds issued under this article until all questions connected with the same are first submitted to a vote of the qualified electors of the political division for which the bonds are to be issued, and receive three fifths of all the votes cast for and against the same: Provided, That a county board of education may contract indebtedness and issue bonds for public school purposes when submitted to a vote of the people of the county if the question of contracting indebtedness and issuing bonds is approved by a majority of all the votes cast for and against the same pursuant to section ten, article X of the Constitution. The governing body of any political division referred to in this article may, and when requested so to do by a petition in writing, praying that bonds be issued and stating the purpose and amount thereof, signed by legal voters of the political division equal to twenty percent of the votes cast in a county for Governor, or in a municipal corporation or school district for mayor or member of the Board of Education, as the case may be, shall, by order entered of record, direct that an election be held for the purpose of submitting to the voters of the political division all questions connected with the contracting of debt and the issuing of bonds. The order shall state:

(a) The necessity for issuing the bonds or, if a petition has been filed as provided herein, that the petition has been filed;

(b) If for the construction of a county-district road or bridge thereon, a summary of the engineer's report provided for in the following section setting forth the approximate extent and the estimated cost of the proposed improvement and the kind or class of work to be done thereon;

(c) Purpose or purposes for which the proceeds of bonds are to be expended;

(d) Valuation of the taxable property as shown by the last assessment thereof for state and county purposes;

(e) Indebtedness, bonded or otherwise;

(f) Amount of the proposed bond issue;

(g) Maximum term of bonds;

(h) Maximum rate of interest;

(i) Date of election;

(j) That the levying body is authorized to lay a sufficient levy annually to provide funds for the payment of the interest upon the bonds and the principal at maturity and the approximate rate of levy necessary for this purpose;

(k) In the case of school bonds, that the bonds, together with all existing bonded

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indebtedness, will not exceed in the aggregate five percent of the value of the taxable property in the school district ascertained in accordance with section eight, article X of the Constitution; and that the bonds will be payable from a direct annual tax levied and collected in each year on all taxable property in the school district sufficient to pay the principal and the interest maturing on the bonds in that year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, which tax levies will be laid separate and apart and in addition to the maximum rates provided for tax levies by school districts on the several classes of property in section one, article X of the Constitution, but in the same proportions as the maximum rates are levied on the several classes of property; and the tax may be levied outside the limits fixed by section one, article X of the Constitution.

Any other provision which does not violate any provision of law, or transgress any principle of public policy, may be incorporated in the order.

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§13-1-5. Engineer's estimate.

Before ordering an election on the question of issuing bonds to construct a county-district road or bridge, whether acting on its own motion or on petition, the county court shall instruct the county road engineer, or some other engineer designated by it for the purpose, to make an investigation and furnish to the court an estimate of the probable cost of the proposed improvement.

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§13-1-6. Bonds may be specified for more than one purpose; single or general purpose defined.

The order or ordinance submitting the proposition of issuing bonds to a vote may specify more than one purpose for which bonds are to be issued: Provided, That the amount of the proceeds of the issue to be used for each purpose shall also be specified therein: Provided further, That all expenditures, including but not limited to expenditures for the acquisition of sites, the construction, erection, equipping and furnishing of one or more buildings, structures, improvements or facilities, or group of buildings, structures, improvements or facilities, and the relocation, alteration, renovation or enlargement of any existing buildings, structures, improvements or facilities, or group of buildings, structures, improvements or facilities, for the same general purpose shall be construed to be a single purpose within the meaning of this section. It shall not be necessary to specify in the order or ordinance submitting the proposition the amount of the proceeds of such bond issue to be used for each such site, building, structure, improvement or facility, or group of buildings, structures, improvements or facilities, which are a part of the same general purpose and it shall be sufficient compliance with this section if such order or ordinance state only the general purposes for which bonds are to be issued and the amount of the proceeds of such issue to be used for each such general purpose.

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§13-1-6a. When proceeds of bond issue specified for one project may be used for another project.

If the order or ordinance submitting the proposition of issuing bonds to a vote specifies several projects within the same general purpose and the amount of the proceeds of such issue to be used for each project and for any reason one or more of said projects cannot be constructed, carried out, or completed, the amount of money specified for such projects and any sums remaining unused upon completion of any one of the specified projects may be allocated by the governing body in its discretion to and expended for any one or more of the remaining projects specified in said order or ordinance if said order or ordinance of submission shall contain a provision authorizing it to do so.

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§13-1-7. When election to be held.

Elections for the purpose of voting upon questions of issuing bonds may be held at any general or primary election which the fiscal body in its order submitting the same to a vote may designate, except that, when a petition is filed asking that bonds be issued, the fiscal body with which the same is filed, shall order a special election and the election shall be held concurrently at the next regularly scheduled general or primary election.

In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

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§13-1-8. Publication of notice of election.

Notice of all bond elections shall be given by publication, within fourteen consecutive days next preceding the date of the election, of the order provided for in section four of this article as a Class II-O 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 political division in which the election is to be held.

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§13-1-9. Registration of voters.

The registration of voters and the use of registration books prescribed by general law shall be applicable to any election under this chapter.

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§13-1-10. Election precincts.

Elections for bond issues for counties, districts and school districts shall be held at the voting precincts established for holding general elections; for municipalities, at the precincts established for the election of municipal officers; and for independent school districts, at the precincts used for voting for boards of education.

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§13-1-11. General election laws to apply; recorders and secretaries to act in lieu of circuit clerks.

All the provisions of the general election laws of this state concerning general or primary elections, when not in conflict with the provisions of this article, shall apply to bond elections hereunder, insofar as practicable: *Provided*, That in bond elections for municipalities, school, or independent school districts, the recorders and secretaries, respectively, shall procure and furnish to the election commissioners at each voting precinct the ballots, pollbooks, tally sheets, and other things necessary for conducting the election, and perform all duties imposed by law upon clerks of the circuit courts in relation to general elections.

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§13-1-12. Form of ballot.

The ballots to be used at elections under this article shall be in substantially the following form:

"Shall ..... (name of political division) incur debt and issue bonds to the amount of $....., to run not more than ..... years from the date thereof, with interest not exceeding the rate of ..... percent per annum, for the purpose of ....., and levy taxes sufficient to pay the interest on and the principal of such bonds.

/ / Yes.

/ / No.

NOTICE TO VOTERS: To vote in favor of the proposition submitted on this ballot, place an X mark in the square before the word "Yes."

To vote against it, place a similar mark before the word "No."

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§13-1-13. Time and manner of canvassing returns.

The authorities calling bond elections shall canvass the returns at the same time with reference to the election and in the same manner as is required of county commissions for general elections: Provided, That the county commission is the board of canvassers to canvass the returns of bond elections called by the board of education.

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§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

If the required amount of all the votes, pursuant to section four of this article, cast for and against the proposition to incur debt and issue negotiable bonds is in favor of the same, the governing body of the political division shall, by resolution, authorize the issuance of the bonds in an amount not exceeding the amount stated in the proposition; establish the maximum rate or rates of interest which the bonds shall bear within the maximum rate stated in the proposition submitted to vote; require that the bonds shall be made payable at the office of the Municipal Bond Commission and at any other place or places as the body issuing the same designates; provide for a sufficient levy to pay the annual interest on the bonds and the principal at maturity; fix the times within the maximum period, as contained in the proposition submitted to vote, when the bonds shall become payable, which shall not exceed thirty-four years from the date thereof; determine whether all or a portion of the bonds will be subject to redemption prior to the maturity thereof; and prescribe a form for executing the bonds authorized.

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§13-1-15. Bonds to be payable in annual or semiannual installments.

Bonds shall be made payable in annual or semiannual installments beginning not more than three years after the date thereof and the amount payable in each year may be so fixed that when the annual interest is added to the principal amount to be paid, the total amount payable in each year in which part of the principal is payable shall be as nearly equal as practicable. Once principal payments commence, it shall be an immaterial variance if the difference between the largest and smallest amounts of principal and interest payable annually or semiannually during the term of the bonds shall not exceed five percent of the total authorized issue. Bonds may be payable in annual or semiannual installments beginning not more than three years after the date thereof, each installment being as nearly equal in principal amount as practicable.

WV Legislature

§13-1-15a. Bonds may be subject to redemption.

All or a portion of the bonds may be subject to redemption prior to the maturity thereof at the option of the body issuing the same as established by resolution of the governing body authorizing the bonds. The body issuing the bonds may not levy taxes in connection with the redemption of any bonds in excess of the taxes that would have been levied for the payment of principal of and interest on the bonds in any year.

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§13-1-16. Recital of certification that bonds are issued in conformity with Constitution and statutes; effect thereof with Attorney General's endorsement.

The resolution authorizing the bonds provided for in section fourteen of this article may direct that they contain the following recital:

"It is certified that this bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of the State of West Virginia."

The recital, when the bonds have been endorsed by the Attorney General as provided in section twenty-eight of this article, are considered an authorized declaration by the governing body of the political division and to import that there is Constitutional and statutory authority for incurring the debts and issuing the bonds; that all the proceedings therefor are regular; that all the acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bonds have existed, happened and been performed in due time, form and manner as required by law; that the amount of the bond and the issue of which it forms a part, together with all other indebtedness, does not exceed any limit or limits prescribed by the Constitution or statutes of this state; and that all questions connected with incurring the debt and issuing the bonds have been first submitted to a vote of the people and have received the required amount of all the votes, pursuant to section four of this article, cast for and against the same at an election regularly called and held for the purpose after notice published and posted in the manner required by law. If any bond be issued containing the recital, and also containing the endorsement of the Attorney General as aforesaid, it shall be conclusively presumed that the recital, construed according to the import hereby declared, is true and neither the political division nor any taxpayer thereof shall be permitted to question the validity or regularity of the obligation in any court or in any action or proceeding.

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§13-1-17. Bonds shall be registered.

The bonds issued hereunder shall be issued only in fully registered form and shall carry registration privileges as set forth in the resolution authorizing the bonds.

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§13-1-18.

Repealed.

Acts, 2009 Reg. Sess., Ch. 23.

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§13-1-19. Signing, sealing and delivery of bonds.

All bonds issued under this article by any county shall be signed by the president of the county commission and countersigned by the clerk of the county commission; bonds issued by any municipality shall be signed by the mayor or other chief executive and countersigned by the clerk, recorder or secretary; bonds issued by a county board of education shall be signed by the president of the Board of Education and countersigned by the secretary thereof. The seal of the political division shall be affixed to the bonds. The delivery of any bonds so executed at any time thereafter shall be valid, although before the date of delivery the person signing the bonds shall have ceased to hold office.

WV Legislature

§13-1-20. Imposition and collection of tax to pay bonds and interest.

It shall be the duty of the governing body of any political division, at or before the time of issuing bonds under this article, to provide for the imposition and collection annually of a tax, in excess of all other taxes, on all property subject to taxation by the political division under the Constitution and laws of this state, sufficient in amount to pay annually the interest on such debt and the principal thereof falling due in each year, such tax to be levied and collected by the same officers, at the same time and in the same manner as the general taxes of the political division. Should any political division neglect or fail for any reason to impose or collect such tax for the payment of the principal or interest of any bonded indebtedness incurred under this article, any person in interest or the State Tax Commissioner may enforce the imposition and collection thereof in any court having jurisdiction of the subject matter, and any suit, action or proceeding brought for such purpose shall be heard and disposed of with reasonable dispatch.

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§13-1-21. Advertisement and sale of bonds.

The governing body of the political division issuing bonds pursuant to this article shall sell the same and collect the proceeds, which proceeds shall be deposited with its treasurer. The governing body of the political division shall advertise such bonds for sale, on sealed bids or electronic bids if the governing body elects to utilize an electronic bidding procedure, which advertisement shall be published 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 the publication shall be the political division. The first publication shall be made at least fourteen days before the date fixed for the reception of bids. The advertisement shall also be published in the Bond Buyer or similar publication and the advertisement may be published electronically: Provided, That all advertisements required by this section may consist of an abbreviated notice of the sale of the bonds. The governing body may reject any and all bids. If the bonds are not sold pursuant to the advertisement, they may, within one hundred twenty days after the date advertised for the reception of bids, be sold by the governing body at private sale, but no private sale shall be made at a price less than the highest bid which is received. If not sold, the bonds shall be readvertised in the manner herein provided. In no event shall bonds be sold for less than their par value.

WV Legislature

§13-1-22. Purposes for which proceeds to be used; purchaser need not see to application thereof.

The proceeds derived from the sale of any bonds shall be used only for the purpose or purposes for which the bonds were issued as set out in the order or ordinance submitting the question to vote, but the purchaser of the bonds shall not be obliged to see to the application thereof.

WV Legislature

§13-1-23. No law, order, ordinance, resolution, proceeding or publication necessary except as prescribed by this article.

This article shall, without reference to any other act of the Legislature, be full authority for the issuance and sale of bonds in this article authorized. No order, ordinance, resolution or proceeding in respect to the issuance of any bond under this article shall be necessary, except such as are required by this article. No publication of any order, ordinance, resolution or proceeding relating to the issuance of such bonds shall be necessary except such as is required by this article. Any publication prescribed hereby may be made in any newspaper conforming to the terms of this article, without regard to designation thereof as the official journal of the political division.

WV Legislature

§13-1-24. Legal status of bonds.

Bonds issued under this article, except to the extent that their status shall be affected by registration made in pursuance of this article, shall have all the qualities of negotiable paper under the law merchant and shall not be invalid for any irregularity or defect in the proceedings for the issuance thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

WV Legislature

§13-1-25. Copy of proceedings to be transmitted to Attorney General for approval or disapproval; publication of approval or disapproval.

The governing body of any political division issuing bonds under this article shall, as soon as practicable after the result of the election authorizing their issuance shall have been officially ascertained, transmit to the Attorney General a duly certified copy of all orders, ordinances, proclamations, notices, advertisements, affidavits, resolutions and records of all the proceedings connected with or pertaining to such bond issue, and any other matters relative thereto which the Attorney General may require. The Attorney General shall thereupon either approve or disapprove the validity of such bond issue, and shall immediately notify the governing body of the political division which authorized the issuance of the bonds of his action by mail, and as soon as practicable notify the people of such political division of his approval or disapproval of such bond issue, by causing notice thereof to be published 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 political division.

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§13-1-26. Review in Supreme Court of Appeals of action of Attorney General.

For a period of ten days from and after the date of the last publication of the notice of the Attorney General of his action in approving or disapproving the validity of any bond issue as provided in the preceding section, any person in interest, or any taxpayer within the political division for which the bonds are authorized to be issued, may present his or its petition to the Supreme Court of Appeals or to a judge thereof in vacation, praying that the action of the Attorney General in approving or disapproving such bond issue, as aforesaid, be reversed or modified; and if the court, or such judge thereof in vacation, be of the opinion to hear and determine the matters in such petition set out, the case shall be proceeded with as in cases of original jurisdiction; but the petitioner shall file with the clerk of the court a bond, with security to be approved by him and in such sum as the court or judge may fix, for the payment of such costs as may be awarded against him in said court. The clerk of the court shall forthwith notify the Attorney General and the governing body of the political division which authorized the issuance of the bonds of the action taken by the court or judge in vacation upon such petition, and for the hearing thereof the Attorney General shall file with the clerk of said court all papers, documents, evidence and records, or certified copies thereof, which were before him and on which he based his approval or disapproval; and before the day fixed for final hearing, he shall file with the clerk of said court a written statement of his reasons for the approval or disapproval of the bond issue. Upon the submission of the case, the court shall decide the matters in controversy and enter such order thereon as to it may seem to be just.

WV Legislature

§13-1-27. Bond issue and tax to pay bonds to be incontestable upon failure to file petition for review or dismissal thereof.

If no person in interest or taxpayer shall within ten days from and after the date of the last publication of the notice of the Attorney General of his action in approving or disapproving the validity of any bond issue, as provided in this article, present his or its petition to the Supreme Court of Appeals or to a judge thereof in vacation praying that the action of the Attorney General be reversed or modified, as hereinbefore provided, or if such petition be filed and the court or judge be of the opinion not to hear and determine the matters in such petition set out, the action of the Attorney General shall be final and no other appeal shall be allowed therefrom; and the bond issue approved by him shall become incontestable and shall be a valid and binding obligation upon the authority issuing the same and upon the taxable property within the political division which authorized the bond issue by the vote of the people therein; and no one shall thereafter have the right to contest in any court or in any action or proceeding the legality of any election held under this article, the bond issue provided for, or the tax required to pay the same, for any cause whatsoever.

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§13-1-28. Indorsement on bonds by Attorney General.

After ten days shall have elapsed from and after the date of the last publication of the Attorney General's notice provided for in section twenty-five of this article, if no proceeding be pending to have his approval of the bond issue reversed and modified, the Attorney General shall indorse upon each and every bond of the issue so approved by him his certificate to the effect that such bond has been approved by him by virtue of the authority vested in him by this article; that notice of his approval was published as required by section twenty-five of this article; that ten days have elapsed since the date of the last publication of such notice; that there has been no appeal from his decision to the Supreme Court of Appeals; and that the bond has become incontestable and is a binding obligation upon the authority issuing the same and upon the taxable property within the political division, and that the validity of such bond shall not be contested thereafter in any court or in any action or proceeding for any cause whatsoever.

WV Legislature

§13-1-29. Costs of proceedings and expenses of Attorney General to be paid out of proceeds of bonds or general fund.

The cost of publishing the notice to taxpayers as herein provided, and the costs of certifying and copying all records, papers and proceedings to be used by the Attorney General in passing upon the validity of the bond issue, and all necessary expense incurred by the Attorney General in connection with any bond issue, shall be paid by the authority issuing such bonds out of the proceeds arising from the sale thereof, if the same be finally approved, and if the bond issue be disapproved, such expense shall be paid out of the General Fund of such authority.

WV Legislature

§13-1-30. Files and records to be kept by Attorney General.

The Attorney General shall keep on file in his office the papers pertaining to any bond issue submitted to him and shall record his findings of approval or disapproval in a well-bound book kept for that purpose in his office, which shall be open for inspection by anyone in interest during business hours.

WV Legislature

§13-1-31. Proceedings to issue bonds under authority of prior statutes; debts heretofore incurred.

Nothing contained in this article shall affect in any way proceeding heretofore begun by the governing body of any political division to issue bonds under the authority of any statutes of this state heretofore in force. Such proceedings may be completed under the statute under which the same were begun and under the provisions of this article so far as the same can be made applicable thereto. Nor shall anything contained in this article invalidate any indebtedness heretofore incurred under a law then existing.

WV Legislature

§13-1-32. Amount of indebtedness authorized by §13-1-3 may be increased by special act as to municipalities and independent school districts; bonds for assessments against abutting property excepted from this article.

Notwithstanding the provisions of section three of this article, when by a special act of the Legislature any municipality or independent school district is authorized to become indebted for any purpose or purposes in a greater amount than is fixed by said section three, bonds may be issued under this article by such municipality or independent school district in an amount not exceeding that fixed by such special act. This article shall not affect any general or special law providing for the issuing of bonds for any improvement to be paid for in whole or in part by assessment against abutting property.

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§13-1-33. Bonds exempt from taxation.

All bonds of the State of West Virginia or of any political subdivision thereof issued hereunder, or under the provisions of chapter eight of this code, shall be exempt from all taxation by the state or by any political subdivision thereof.

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§13-1-34. Bonded indebtedness of school districts; annual tax to be levied and collected to pay same; definition of value.

(a) Notwithstanding any other provision of this article or of any other law to the contrary, every school district, by and through its Board of Education, shall levy and collect in each year a direct annual tax on all taxable property in such school district sufficient to pay the principle and interest maturing in such year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, on any bonded indebtedness of such school district, now or hereafter contracted, not to exceed five percent of the value of the taxable property therein to be ascertained in accordance with section 8 of article X of the Constitution, which levies shall be laid separate and apart and in addition to the maximum rates provided for tax levies by school districts on the several classes of property specified in section 1, article X of the Constitution, but in the same proportions as such maximum rates are levied on the several classes of property, and which tax may be levied outside the limits fixed by said section 1, article X of the Constitution.

(b) The term "value" as used in this section and in section 8, article X of the Constitution, is used in the same context that the term "value" is used in section 1, article X of the Constitution, and means the "worth in money" of a piece of property -- its market value for ad valorem property tax purposes.

WV Legislature

§13-1-35. Bonded indebtedness of counties, magisterial districts and municipal corporations; levy and collection of taxes to pay same.

Notwithstanding any other provisions of this article or any other law to the contrary, every county, by and through its county court, either for or on behalf of the county, or for and on behalf of any magisterial district, or any group of magisterial districts therein, and any municipal corporation, by and through its council or other governing body in lieu thereof, shall levy and collect in each year a direct annual tax on all the taxable property in such county, magisterial district or districts, or municipality sufficient to pay the principal and interest maturing in such year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, on any bonded indebtedness of such county, magisterial district or districts, or municipality, as the case may be, now or hereafter contracted, not to exceed in the aggregate five percent of the value of the taxable property therein, to be ascertained in accordance with section 8, article X of the Constitution, which levies shall be laid separate and apart and in addition to the maximum rates provided for tax levies by such counties, magisterial district or districts, or municipalities, as the case may be, on the several classes of property specified in section 1, article X of the Constitution, but in the same proportions as such maximum rates are levied on the several classes of property, and which tax may be levied outside the limits fixed by said section 1, article X of the Constitution.

The order of the county court, either for or on behalf of the county or for and on behalf of any magisterial district, or any group of magisterial districts therein, or of any municipal corporation, by its council or other governing body in lieu thereof, hereafter adopted calling an election on the issuance of bonds of such county, magisterial district or districts, or municipality, as the case may be, which together with the existing bonded indebtedness of such county, magisterial district or districts, or municipality, as the case may be, will not exceed in the aggregate five percent of the value of the taxable property in such county, magisterial district or districts, or municipality, as the case may be, the value to be ascertained in accordance with section 8, article X of the Constitution, shall contain a statement in substantially the following form:

Such bonds, together with all existing bonded indebtedness of such county, magisterial district or districts, or municipality, as the case may be, will not exceed in the aggregate five percent of the value of the taxable property in such county, magisterial district or districts, or municipality, as the case may be, ascertained in accordance with section 8, article X of the Constitution; and that such bonds will be payable from a direct annual tax levied and collected in each year on all taxable property in such county, magisterial district or districts, or municipality, as the case may be, sufficient to pay the principal and interest maturing on such bonds in such year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, which tax levies will be laid separate and apart and in addition to the maximum rates provided for tax levies by counties, magisterial district or districts, or municipalities, as the case may be, on the several classes of property specified in section 1, article X of the Constitution, but in the same proportions as such maximum rates are levied on the several classes of property; and said tax may be levied outside the limits fixed by

section 1, article X of the Constitution.

WV Legislature

§13-2-1. What political divisions may issue refunding bonds; when issued.

Any county, by and through its county commission, either for and on behalf of the county or for and on behalf of any magisterial district or group of magisterial districts therein; any municipal corporation, by and through its council or other governing body in lieu thereof; or any school district, or any independent school district, by and through its Board of Education or other fiscal body in lieu thereof, may, in the manner and subject to the limitations and conditions contained in this article, issue and sell its bonds for the purpose of refunding the bonds of such political division which have become or are becoming due and payable and for the discharge of which there are or will be when the bonds mature no funds or insufficient funds available; or when, in the opinion of the governing body of the political division obligated to the payment of such bonds, the rate of levy necessary to provide funds for their discharge will impose excessive taxes upon the taxpayers of such political division; or for the purpose of providing for the payment of outstanding bonds in advance of the maturity or redemption thereof through the making of a deposit as provided in section four of this article; or for the purpose of rendering outstanding bonds not due when such outstanding bonds are to be presented for payment before maturity by the exercise of option provisions or by agreement with the holders thereof. Such refunding bonds may be issued bearing the same or a higher or lesser rate of interest than the bonds to be refunded. Except to the extent that additional taxes for such purpose have been approved by the voters and the levy of such additional taxes provided for in the manner stipulated in sections seven through fourteen of article one of this chapter, no such refunding bonds shall be issued bearing a higher rate of interest than the bonds being refunded or shall be issued in a principal amount exceeding the principal amount of the bonds to be refunded unless the amount of debt service payable on such refunding bonds in each year is equal to or less than the amount of taxes expected to be available therefor as shall be certified by the chairman of the West Virginia Municipal Bond Commission prior to the issuance of such refunding bonds. The amount of taxes expected to be available in each year for purposes of this section shall be based upon the rates of levy stipulated in the order directing the election at which the issuance of the bonds being refunded was approved by the voters and upon the most recent assessed valuation of the affected property prior to such election. In the event only a portion of the bonds provided for such order are being refunded or have been issued, an appropriate reduction shall be made in the amount of taxes expected to be available based upon the actual debt service requirements of bonds which have been issued but are not being refunded and the estimated debt service requirements of bonds which have not been issued.

WVLegislature.gov

§13-2-2. Terms of refunding bonds; time, place and amount of payments.

Upon determining to issue such refunding bonds, the governing body of such political division shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the principal amount permitted by section one of this article, fix the date thereof, the rate or rates of interest which such bonds shall bear, payable semiannually, and require that the bonds shall bear, payable at the office of the State Treasurer and at such other place or places as the body issuing the same may designate. Such resolution shall also provide that such bonds shall mature serially in annual installments beginning not more than three years after the date thereof, and the last of such annual installments shall mature in not exceeding thirty-four years from the date of such bonds. The amount payable in each year on the refunding bonds, together with any unrefunded or unissued bonds of the prior issue, may be so fixed that, when the amount of interest is added to the principal amount to be paid during the respective years, the total amount payable in each year shall be as nearly equal as practicable; or such bonds may be made payable in annual installments as nearly equal in principal as may be practicable.

All or a portion of the refunding bonds may be subject to redemption prior to the maturity thereof, at the option of the body issuing the same, at such times and prices and on such terms as shall be designated in the resolution required by this section. The body issuing the refunding bonds may not levy taxes in connection with the redemption of any refunding bonds in excess of the taxes that would have been levied for the payment of principal of and interest on such refunding bonds in such year.

WV Legislature

§13-2-3. Certain provisions of article one to apply to refunding bonds.

All the provisions of sections seventeen, eighteen, nineteen and twenty of article one of this chapter, relating to bonds issued for original indebtedness, shall apply to the same extent and with equal force and effect to refunding bonds issued under the provisions of this article.

WV Legislature

§13-2-4. Disposition of bonds; cancellation of original bonds.

The governing body of the political body of the political subdivision issuing bonds under this article may sell the same or any part thereof and collect the proceeds, or such bonds may be delivered to the holder or holders of the bonds to be refunded in exchange therefor.

It is the intention of this article to authorize political divisions to issue bonds for the purpose of refunding outstanding bonds without thereby contracting any additional indebtedness, and it shall be conditional upon the delivery of any refunding bonds that the bonds to be refunded be canceled and paid simultaneously with the issuance and delivery of such refunding bonds: Provided, That such refunding bonds shall be issued in an amount sufficient to effect the refunding and may include an amount sufficient to pay (1) the principal amount outstanding of the bonds to be refunded, (2) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded (which need not necessarily be on the first available redemption date), (3) any redemption premiums to be paid thereon, (4) any reasonable expenses incurred in connection with such refunding and (5) any other reasonable costs deemed appropriate by the state, including without limitation, the expenses of preparing and delivering the refunding bonds, legal fees, financial advisor fees, consultant fees, and other expenses incurred in connection with the issuance, sale and delivery of the refunding bonds.

For all purposes of this section, bonds 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 West Virginia Municipal Bond Commission either:

(a) 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

(b) Direct obligations of the United State of America or the State of West Virginia, or obligations fully and irrevocably secured as to the payment of both principal and interest by such direct obligations, the payment on which when due 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.

All such amounts shall be set aside and held in trust and irrevocably dedicated solely to the payment of such bonds, except that amount in excess of the amounts required for the payment of the bonds so refunded may be applied to the payment of costs related to the issuance, carrying, insuring or servicing the refunding bonds, including costs of credit or market enhancement services, such as letters of credit, remarketing arrangements and similar services. Any amount deposited pursuant to this section may include amounts already held on deposit by the West Virginia Municipal Bond Commission for the payment of the bonds to be refunded.

WV Legislature

§13-2-5. Article sufficient authority for issuing refunding bonds.

This article shall, without reference to any other act of the Legislature, be full authority for the issuance, sale and exchange of bonds in this article authorized. No order, ordinance, resolution or proceeding in respect to the issuance of any bonds hereunder shall be necessary except such as are required by this article. No publication of any notice, order, ordinance or proceeding relating to the issuance of such bonds shall be necessary.

WV Legislature

§13-2-6. Issuance without election or notice.

The issuance and sale of exchange bonds in this article authorized may be had without an election or publication of any notice.

WV Legislature

§13-2-7. Invalidity of part of article not to affect other parts.

If any clause, sentence, paragraph or part of this article shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the article, but shall be confined in its application to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment has been rendered.

WV Legislature

§13-2-8. Bonds exempt from taxation.

All bonds of the State of West Virginia or of any political subdivision thereof issued hereunder shall be exempt from all taxation by the state or by any political subdivision thereof.

WV Legislature

§13-2-9. Funding of orders, drafts or warrants by county courts and boards of education at rate lower than six percent.

County courts and boards of education may, upon the application of the owner or holder or holders, by an order entered of record, fund any indebtedness represented by orders, drafts, or warrants by taking up one or more of such orders, drafts, or warrants issued on the same fund, and issue in lieu thereof new orders, drafts or warrants to the person or persons entitled to receive the sums of money due upon said orders, drafts, or warrants, and in which orders there shall be set out in detail the number of each order, draft, or warrant, the date thereof, to whom issued, the fund or funds on which drawn, the name on the present holder thereof, or the person or persons entitled to receive the sum due thereon, if interest-bearing the date from which interest began, the credits, if any endorsed thereon, and the date thereof, and such other information so as to completely identify the orders, drafts or warrants for which new orders, drafts or warrants are issued: Provided, however, That no power or authority herein given or contained shall be construed to make legal and binding any order, draft or warrant not legal and/or binding when originally ordered and/or issued by any county court or Board of Education. The court and/or boards shall when the orders, drafts or warrants are interest-bearing, in issuing such new orders, drafts or warrants, issue them on the same fund upon which the original order, draft or warrant was issued and for the aggregate amount of unpaid principal and interest to that date, and cancel all such orders, drafts or warrants funded and file the same with the clerk of the county court of their county for preservation. All such new orders, drafts or warrants shall not become interest-bearing until the same shall have been presented to the sheriff for payment and endorsed as provided by law, and when so presented shall draw interest at five and one-half percent per annum.

WV Legislature

§13-2A-1. How article cited.

This article may be cited as "The Revenue Bond Refinancing Act of One Thousand Nine Hundred Thirty-Seven."

WV Legislature

§13-2A-2. Definitions.

The following terms 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" shall mean any city, town, county, public service district, sanitary district or the State of West Virginia acting through any of its agencies, boards, commissions or departments having power to issue revenue obligations.

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

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

The term "enterprise" shall mean any work, undertaking, or project which the public body is or may hereafter be authorized to construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing, or the refinancing and improving 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.

The term "federal agency" shall include the United States of America, the president of the United States of America, the federal emergency administrator of public works, reconstruction finance corporation, or any agency, instrumentality or corporation of the United States of America, which has heretofore been or may hereafter be designated or created by or pursuant to any act or acts or joint resolution or joint resolutions of the Congress of the United States of America, or which may be owned or controlled, directly or indirectly, by the United States of America.

The term "improving" shall mean reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing or improving; or any one or more, or all of the foregoing.

The term "refunding bonds" shall mean notes, bonds, certificates or other obligations of a public body issued pursuant to this article, or pursuant to any other law, as supplemented by, or in conjunction with this article.

The term "refinancing" shall mean funding, refunding, paying or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations heretofore or hereafter issued to finance or to aid in financing the acquisition, construction or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears, the redemption premiums, if any, payable on the redemption of such notes, bonds or other obligations, the

WV Legislature

interest to accrue thereon to the payment or redemption date, whether or not such interest is represented by coupons or interest certificates, and the costs of issuance of the refunding bonds.

The term "revenues" shall mean all fees, tools, 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 "holder of bonds" or "bondholder" or any similar term shall mean 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 bond or bonds which shall at the time be registered other than to bearer.

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.

WV Legislature

§13-2A-3. Purpose of refunding bonds.

Any public body shall have power and is hereby authorized to refinance, or to refinance and improve, any enterprise, and for such purpose or purposes to borrow money and issue refunding bonds from time to time.

WV Legislature

§13-2A-4. Issuance authorized by resolution of governing body.

The refunding bonds shall be authorized by resolution or resolutions of the governing body of the public body. Such resolution or resolutions may be adopted at a regular or special meeting, and at the same meeting at which they are introduced, by a majority of all the members of the governing body then in office. Such resolution or resolutions shall take effect immediately upon the adoption thereof. No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the public body.

WV Legislature

§13-2A-5. Form of bonds; interest rates; negotiability.

The refunding bonds 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 in any event exceeding forty years from their respective dates; may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds or other obligations refinanced thereby; 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 thereof, 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 provided by resolution or resolutions of the governing body of the public body: Provided, That if the refinancing is for the sole purpose of discharging at less than their face or par value all of the outstanding notes, bonds or other obligations of a Class I or Class II city, as defined in chapter eight of this code, and such notes, bonds or other obligations are to be refinanced, then such refunding bonds may bear interest at any rate or rates, not exceeding ten percent per annum, which results in a total interest cost of not more than the total amount of interest, including interest then in arrears, that would have been payable from the date of such refinancing to maturity of the notes, bonds or other obligations so refinanced: 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 notes, bonds or other obligations refinanced thereby, then such refunding bonds may be issued bearing 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 notes, bonds or other obligations refinanced thereby could bear if they were being issued as of the date of issuance of such refunding bonds, and notwithstanding any other limitations contained in this article, such refunding bonds may not be sold or exchanged at a price which would result in a net interest cost, herein defined to mean the total amount of interest to accrue on the refunding bonds from the date thereof 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 or exchanged, in excess of the maximum net interest cost which the outstanding notes, bonds or other obligations to be refinanced thereby could be sold or exchanged for if they were being issued as of the date of issuance of such 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.

WVLegislature

§13-2A-6. Validity.

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 validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise, for the refinancing and improving of which the refunding bonds are to be issued, or by contracts made in connection with the improving of any such enterprise. Any resolution authorizing refunding bonds may provide that any 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 resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this article.

WV Legislature

§13-2A-7. Sale or exchange; deposit and investment of proceeds.

The refunding bonds may be sold or exchanged in installments at different times, or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates or other obligations to be refinanced thereby.

If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds or other obligations of the public body issued to finance or to aid in financing the acquisition, the construction, the improving, the refinancing, or the improving and refinancing, of an enterprise. The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds or other obligations of the public body, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due. The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if, and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at public sale, after advertisement in Bond Buyers Guide, or the Wall Street Journal, once a week for two weeks prior to date of sale, as the governing body shall deem best for the interests of the public body. Such refunding bonds may be sold in any aggregate principal sum including the principal amount outstanding of the revenue obligations of the public body being refinanced, interest in arrears and interest accrued and to accrue on such revenue obligations until payment or redemption thereof, any redemption premiums applicable to such revenue obligations, any costs of improving the enterprise, the revenues of which were pledged to the payment of such revenue obligations, and of acquiring, constructing and improving any other enterprise and the costs of issuing such refunding bonds. The proceeds of sale of the refinancing portion of a refunding bond issue shall be deposited irrevocably in trust for the purchase, redemption prior to maturity or payment at maturity of the revenue obligations being refinanced, such purchase to be at a price not exceeding the par value of such revenue obligations plus accrued interest at the time of such purchase. Such proceeds while so deposited in trust shall be invested in direct obligations of the United States of America or placed in time deposits secured by direct obligations of the United States of America, and maturing at such times and in such amounts as shall be necessary to meet payments of principal and interest on such revenue obligations being refinanced or to redeem the same prior to the maturities thereof. Such investments may be sold at not less than the amount paid therefor, and such deposits may be withdrawn, to the extent necessary to provide moneys for the purchase of any of such revenue obligations. Earnings from such investments shall, as received, be transferred to and deposited in the

sinking fund reserve or the bond and interest sinking fund established for payment of the refunding bonds.

WV Legislature

§13-2A-8. Security for payment; prior issues not impaired.

The refunding bonds shall be special obligations of the public body and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution or resolutions of the governing body authorizing the issuance of the refunding bonds, having due regard to the cost of operation and maintenance of the enterprise and the amount or proportion, if any, of the revenues of the enterprise previously pledged, and any public body shall have power by resolution of its governing body to pledge for the security of the refunding bonds a fixed amount without regard to any fixed proportion of the gross revenues of the enterprise.

As additional security for any issue of refunding bonds hereunder, or any part thereof, any public body shall have power, and is hereby authorized to, by resolution of its governing body, confer upon the holders of the refunding bonds all rights, powers and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds or other obligations for the refinancing of which such refunding bonds shall have been issued, including, but not limited to, the preservation of the lien of such notes, bonds or other obligations without extinguishment, impairment or diminution thereof. In the event any public body exercises the power conferred by this paragraph, each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this paragraph and each note, bond, certificate or other obligation of the public body to be refinanced by any such refunding bonds, shall be kept intact and shall not be cancelled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged, but shall be stamped with a legend to the effect that such note, bond, certificate or other obligation has been refunded pursuant to the Revenue Bond Refinancing Act of One Thousand Nine Hundred Thirty-Seven.

All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number, date of bonds, of sale, of execution or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution or resolutions 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 notes, bonds, or other obligations of the public body, or to authorize the public body to alter the terms of any such agreements, or to impair, or to 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.

WV Legislature

§13-2A-9. 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.

WV Legislature

§13-2A-10. Exemption from taxation.

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

WV Legislature

§13-2A-11. Fiscal agent.

Any public body shall have power, in connection with the issuance of refunding bonds, to appoint a fiscal agent, to provide for the powers, duties and functions and compensations of such fiscal agent, to limit the liabilities of such fiscal agent, to prescribe a method for the resignation, removal, merger or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

WV Legislature

§13-2A-12. Duties of public body and officers as to bonds and rights of bondholders.

In order that the payment of the refunding bonds, and interest thereon, shall be adequately secured, any public body issuing refunding bonds pursuant to this article and the proper officers, agents and employees thereof, are hereby directed, and it shall be the mandatory duty of such public body and such officers, agents and employees under this article, and it shall further be of the essence of the contract of such public body with the bondholders, at all times:

To pay or cause to be paid punctually the principal of every refunding bond, and the interest thereon, on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

To operate the enterprise in an efficient and economical manner and to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges in connection therewith as may be necessary or proper, which said fees, tolls, rates, rentals and other charges shall be at least sufficient, after making due and reasonable allowances for contingencies and for a margin or error in the estimates, to pay all current expenses of operation, and maintenance of such enterprise; to pay the interest on and principal of the refunding bonds as the same shall become due and payable; to comply in all respects with the terms of the resolution or resolutions authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and to meet any other obligations of the public body which are charges, liens, or encumbrances upon the revenues of such enterprise;

To operate, maintain, preserve and keep, or cause to be operated, maintained, preserved and kept, the enterprise and every part and parcel thereof, in good repair, working order and condition;

To preserve and protect the security of the refunding bonds and the rights of the holders thereof, and to warrant and defend such rights against all claims and demands of all persons whomsoever;

To pay and discharge, or cause to be paid or discharged, any and all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof, prior or superior to the lien of the refunding bonds, or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

To hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution or resolutions authorizing the issuance of the refunding bonds, or, if such resolution or resolutions shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution or resolutions as modified;

WV Legislature

To keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof, and which, together with all other books and papers of the public body, shall at all times be subject to the inspection of the holder or holders of not less than ten percent of the refunding bonds then outstanding, or his or their representatives duly authorized in writing.

None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the public body of any funds other than revenues received or receivable from the enterprise.

WV Legislature

§13-2A-13. Provisions in resolution authorizing bonds.

The governing body of any public body shall have power, in addition to the other powers conferred by this article, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

Limitations on the purpose to which the proceeds of sale of any issue of refunding bonds, or any notes, bonds or other obligations then or thereafter to be issued to finance the improving of the enterprise, may be applied;

Limitations on the issuance and on the lien of additional refunding bonds, or additional notes, bonds or other obligations to finance the improving of the enterprise which are secured by or payable from the revenues of such enterprise;

Limitations on the right of the public body or its governing body to restrict and regulate the use of the enterprise;

The amount and kind of insurance to be maintained on the enterprise, and the use and disposition of insurance moneys;

Pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

Covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

Events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

The rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations;

The vesting in a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees, and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this article or duties imposed hereby;

A procedure by which the terms of any resolution authorizing refunding bonds, or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument may be amended or abrogated, and as to the amount of refunding bonds the holders of which must consent thereto, and the manner in which such consent may be given;

The execution of all instruments necessary or convenient in the exercise of the powers

WV Legislature

granted by this article or in the performance of the duties of the public body and the officers, agents and employees thereof;

Refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted, or at any time hereafter in force, which may affect the duties or covenants of the public body in relation to the refunding bonds, or the performance thereof, or the lien of such refunding bonds;

The purchase out of any funds available therefor, including, but not limited to, the proceeds of refunding bonds, of any outstanding notes, bonds or obligations, including, but not limited to, refunding bonds, and the price or prices at which, and the manner in which, such purchases may be made;

Any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds, or as may tend to make the refunding bonds more marketable;

The manner of collecting the fees, tolls, rates, rentals or other charges for the services, facilities or commodities of the enterprise, and the combining in one bill of the fees, tolls, rates, rentals or other charges for the services, facilities or commodities of the enterprise with the fees, tolls, rates, rentals or charges for other services, facilities or commodities afforded by the public body; and

The discontinuance of the services, facilities or commodities of the enterprise as well as any other services, facilities or commodities afforded by the public body, in the event that the fees, tolls, rates, rentals or other charges for the services, facilities or commodities of the enterprise are not paid.

Nothing in this section shall be construed to authorize any public body to make any covenants, to perform any act or to do anything which shall require the expenditure in any manner or for any purposes by the public body of any funds other than revenues received or receivable from the enterprise.

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§13-2A-14. Receivership upon default; termination.

In the event that the public body shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the public body or the governing body or officers, agents or employees thereof shall fail or refuse to comply with the provisions of this article, or shall default in any agreement made with the holders of the refunding bonds, any holder or holders of refunding bonds, or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to the circuit court, or any court of competent jurisdiction, for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such refunding bonds. Upon such application the circuit court may appoint, and if the application is made by the holders of twenty-five percent in principal amount of such refunding bonds then outstanding, or any trustee for holders of such refunding bonds in such principal amount, shall appoint a receiver of the enterprise.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the public body, its governing body, officers, agents, and employees and all persons claiming under them, wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the public body or otherwise, as the receiver shall deem best, shall exercise all the rights and powers of the public body with respect to the enterprise as the public body itself might do. Such receiver shall maintain, restore, insure and keep insured, the enterprise, and from time to time shall make all such necessary or proper repairs which to such receiver shall seem expedient, and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver shall deem necessary or proper and reasonable, and shall collect and receive all revenues and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

Whenever all that is due upon the refunding bonds, and interest thereon, and upon any other notes, bonds or other obligations, and interest thereon, having a charge, lien or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may, in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the public body, but the same right of the holders of the refunding bonds to secure the appointment of a receiver shall exist upon any subsequent default, as hereinabove provided.

Such receiver shall, in the performance of the powers hereinabove conferred upon him act under the direction and supervision of the court making such appointment, and shall at all

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times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein.

Notwithstanding anything in this section to the contrary, said receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the municipality and useful for the enterprise, but the authority of any such receiver shall be limited to the operation and maintenance of the enterprise and no court shall have jurisdiction to enter any order or decree requiring or permitting said receiver to sell, mortgage, or otherwise dispose of any such assets.

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§13-2A-15. Suits by bondholders.

Subject to any contractual limitations binding upon the holders of any issue of refunding bonds, or the trustee therefor, including, but not limited to, the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of refunding bonds, or trustee therefor, shall have the right and power for the equal benefit and protection of all holders of refunding bonds similarly situated;

By mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the public body and its governing body and any of its officers, agents and employees, and to require and compel such public body or such governing body or any such officers, agents or employees to perform and carry out its and their duties and obligations under this article and its and their covenants and agreements with bondholders;

By action or suit in equity to require the public body and the governing body thereof to account as if they were the trustee of an express trust;

By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

To bring suit upon the refunding bonds.

No remedy conferred by this article upon any holder of refunding bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this article or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor, to exercise any right or power accruing upon any default, shall impair any such right or power, nor shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of refunding bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the refunding bonds, or any trustee therefor, then and in every such case the public body and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

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§13-2A-16. Article complete authority for refunding bonds; 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: Provided, however, That the principal amount of bonds authorized by this article for refunding or refinancing shall be deemed to apply to the principal amount of refunding bonds authorized by all other laws providing for the issuance and refunding of revenue bonds by public bodies, and the sale thereof, notwithstanding any contrary provisions of such other laws. This article is remedial in nature and shall be liberally construed.

WV Legislature

§13-2B-1. How article cited.

This article may be cited as "The 1937 Validating Act."

WV Legislature

§13-2B-2. Definitions.

The following terms, wherever used or referred to in this article, shall have the following meaning:

The term "public body" shall mean any city, town or county or the state acting through the state commissioners of public institutions.

The term "bonds" shall mean bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

WV Legislature

§13-2B-3. Prior bond issues validated.

All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body to which any loan or grant has heretofore been made by the United States of America through the federal emergency administrator of public works for the purpose of financing or aiding in the financing of such work, undertaking or project, including all proceedings for the authorization and issuance of such bonds, and the sale, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than Constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities (other than Constitutional) in such proceedings, including the publication of ordinances or resolutions, the holding of meetings to hear protests pursuant to such publication, the description of the work, undertaking or project in such ordinances or resolutions, the location of such work, undertaking or project, whether within or without the limits of the state, or in the sale, execution or delivery of such bonds, and notwithstanding that the members of such governing body or commission or officers may not have been elected, appointed or qualified for the offices they purported to hold; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body.

WV Legislature

§13-2B-4. Prior proceedings for pending bond issues validated.

All proceedings, which have been taken prior to the date this article takes effect, for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body to which any loan or grant is under contract to be made by the United States of America through the federal emergency administrator of public works for the purpose of financing, or aiding in the financing, of such work, undertaking or project, including all proceedings for the authorization and issuance of bonds, and for the sale, execution and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than Constitutional) of such public body or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities (other than Constitutional) in such proceedings, including the publication of ordinances or resolutions, the holding of meetings to hear protests pursuant to such publication, the description of the work, undertaking or project in such ordinances or resolutions, the location of such work, undertaking or project, whether within or without the limits of the state, and notwithstanding that the members of such governing body may not have been elected, appointed or qualified for the office they purported to hold.

WV Legislature

§13-2C-1. Short title.

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

WV Legislature

§13-2C-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding (a) that critical conditions of unemployment exist in many areas of this state; (b) that lack of employment and business opportunities have resulted in thousands of people leaving this state to find employment elsewhere, and this exodus has adversely affected the tax base of counties and municipalities within this state, resulting in an impairment of their ability to support local government; (c) that the development of new commercial, mining, industrial and manufacturing projects are essential to relieve unemployment and establish a balanced economy within the state; (d) that the present and prospective health, happiness, safety, right of gainful employment and general welfare of the citizens of each of the counties and municipalities of this state will be promoted by the establishment of industrial projects and commercial projects as herein provided; (e) that the means and measures herein authorized for the promotion of industrial projects and commercial projects are, as a matter of public policy, for the public purpose of the several counties, municipalities and the State of West Virginia; (f) that the abatement or control of pollution of the environment of the state is necessary to protect the health and welfare of the citizens of the state, to protect the natural resources of the state and to encourage the economic development of the state; and (g) that in addition to the development of new industrial projects and commercial projects the retention of existing industrial projects and commercial projects within the state through the means and measures herein authorized is vital to the maintenance of a balanced economy and for the preservation of employment within the state and is for the public purpose of the several counties, municipalities and the State of West Virginia.

WV Legislature

§13-2C-3. Definitions.

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

(a) "Commercial project" means real or personal property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, farms, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection with a commercial enterprise or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education, instructional buildings and other facilities used in connection with nonpublic institutions of higher education, facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities.

(b) "Committee" means the industrial revenue bond allocation committee created by section three-a of this article.

(c) "County commission" means the governmental body created by section twenty-two, article VIII of the West Virginia Constitution.

(d) "Governmental body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, having power to issue revenue bonds, and the West Virginia public energy authority.

(e) "Industrial project" means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of water, if available on reasonable demand to members of the general public, or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

(f) "Industrial pollution" means any gaseous, liquid or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business or from the development, processing or recovery of any

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natural resources which pollute the land, water or air of this state.

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§13-2C-3a. Continuation of industrial revenue bond allocation review committee; appointment, terms of members; voting; expenses; duties.

(a) There is continued the West Virginia industrial revenue bond allocation review committee consisting of the members of the board of the West Virginia economic development authority created by article fifteen, chapter thirty-one of this code.

(b) Members are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That no member may be eligible for expenses for meetings of both the board of the West Virginia economic development authority and the West Virginia industrial revenue bond allocation review committee when the meetings are held on the same day.

(c) A majority of the members of the committee constitutes a quorum for the purpose of conducting business. The affirmative vote of at least the majority of the members present is necessary for any action taken by vote of the committee. No vacancy in the membership of the committee impairs the right of a quorum to exercise all the rights and perform all the duties of the committee.

(d) The committee shall review and evaluate all applications for reservation of funds submitted to the Development Office by a governmental body pursuant to the provisions of subsections (d) and (e), section twenty-one of this article, and shall make reservations of the state allocation (as defined in subdivision (2), subsection (b) of section twenty-one of this article) pursuant to subdivision (3), subsection (b) and subsection (c) of section twenty-one of this article.

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§13-2C-4. 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, shall have the following powers: (1) To acquire, whether by purchase, construction, gift, lease or otherwise, one or more industrial projects or commercial projects, or additions thereto, which shall be located within this state; (2) to lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any or all of its industrial projects or commercial projects for such rentals or amounts and upon such terms and conditions as the governing body may deem advisable; (3) to finance one or more industrial projects or commercial projects by making secured or unsecured loans to others to provide funds for the acquisition, by purchase, construction, lease or otherwise, of any such project or projects; (4) to issue revenue bonds for the purpose of defraying the cost of acquisition, by construction, purchase, lease or otherwise, by the county, municipality or others, of an industrial project or commercial project or an addition, extension, or improvement thereto, and to secure the payment of such bonds, all as hereinafter provided; and (5) to issue and deliver revenue bonds in exchange for an industrial project or commercial project.

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§13-2C-5. Location of industrial projects or commercial projects.

Any industrial project or commercial project acquired by construction and purchase, or by either, or financed by a county, shall be located within the county issuing such revenue bonds and any industrial project or commercial project acquired by construction and purchase, or by either, or financed by a municipality, may be situated without or within the corporate bounds of such municipality, but it shall be located within the county in which said municipality is situated, except where a part of such municipality is situated within two or more counties, then said industrial project or commercial project may be located within either county of which said municipality forms a part and when an industrial project or commercial project is so acquired or financed by a municipality the same shall not be located within the corporate bounds of another municipality without the consent of the governing body of such municipality.

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§13-2C-6. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire by construction and purchase, or by either, or finance one or more industrial projects or commercial projects or additions thereto by the issuance and delivery of revenue bonds in which case such governmental bodies shall jointly exercise all the rights, authority, power and duties herein conferred upon a county commission or a municipality when acting singly and they shall also be subject to the same limitations, restrictions and conditions as are herein imposed on a single governmental body in connection with the acquisition or financing of an industrial project or commercial project: Provided, That notwithstanding the signing and sealing requirements set forth in section seven of this article, the respective governing bodies may provide by agreement among themselves, approved by resolution, that any 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 seven by one governing body shall be effective 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.

WV Legislature

§13-2C-7. Bonds issued to finance industrial project or commercial project.

All bonds issued by a county commission or by a municipality under the authority of this article shall be limited obligations of the county, or of the municipality. The principal and interest on such bonds shall be payable out of the revenues derived from the lease, sale, financing or other disposition of the industrial project or commercial project for which the bonds are issued, or any other revenue derived from such industrial project or commercial project. The bonds and interest coupons issued under the authority of this article shall never constitute an indebtedness of the county, or of the municipality 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, or of the municipality issuing the same. Neither shall such bond nor interest thereon be a charge against the general credit or taxing powers of the county, or the municipality 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 or as to the principal and interest 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 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 governing body whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the governing body at public or private sale at, above or below par, as the governing body shall authorize. The said bounds may also be issued and delivered to the owner of an industrial project or commercial project in exchange therefor and in partial or complete payment of the purchase price thereof.

The bonds issued pursuant to this article by a county commission shall be signed by the president and attested by the clerk of the county commission under the seal of the commission and the bonds issued by a municipality shall be signed by the mayor or other chief officer thereof and attested by the clerk, recorder or other official custodian of the records of said municipality and under the seal of the municipality. The coupons attached thereto shall bear the facsimile signature of the president of the county commission or the mayor or other chief officer of the municipality. 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 industrial project or commercial project, or if additional real or personal property is to be added to the industrial project or commercial project, additional bonds may in like manner be issued to provide the amount of the deficiency, or to defray the cost of acquiring or financing such additional real or personal property, 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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§13-2C-8. Security for bonds.

Unless the governmental body shall otherwise determine in the resolution authorizing the issuance of the revenue bonds under the authority of this article, there is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an industrial project or commercial project which was acquired, purchased, constructed, or built or improved, or financed with the proceeds of said bonds, 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 lease, sale, financing or other disposition of the industrial project or commercial project, by the governmental body issuing such bonds. In the discretion and at the option of the county commission or municipality, such revenue bonds may also be secured by a trust indenture by and between the county commission or the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia. The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the county commission or the municipality in relation to the construction, acquisition or financing of an industrial project or commercial project, or part thereof, or an addition thereto, and the improvement, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the industrial project or commercial project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the governing body and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, and the entity which leases, purchases or will own the project or either thereof, who may require the security given by any contractor or any depository of the proceeds of the bonds or the revenues received from the lease, sale, financing or other disposition of the industrial project or commercial project be satisfactory to such purchasers, their successors, assigns or nominees, or be satisfactory to the entity which leases, purchases or will own the industrial project or commercial project. Such indenture may set forth the rights and remedies of the bondholders, the county or municipality or such trustee, and said indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the governmental body issuing the same, upon default in the payment of rentals, or amounts due from the entity which leases, purchases, or will own the project or for other cause. The governing body may also provide by resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the industrial project or commercial project to such depository as it may determine, for the custody and investment 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 resolution or of the indenture for record in the office of the clerk of the county commission of the county in which an industrial project or commercial project is located, the

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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 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 industrial project or commercial project from which the revenues so pledged may be derived, and the same may be secured by an assignment of the lease on or sale or financing agreement with respect to said industrial project or commercial project and by assignment or pledge of the income received by virtue of said lease, sale or financing agreement. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the governing body 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 rental, purchase or other payments for any industrial project or commercial project covered by such proceedings or mortgage, the terms to be incorporated in the lease, sale or financing agreement with respect to such industrial project or commercial project, the improvement, repair, maintenance and insurance of such industrial project or commercial project, the creation and maintenance of special funds from the revenues received from the lease, sale or financing of such industrial project or commercial project and the rights and remedies available in event of default to the bondholders, the governmental body, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the governing body 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 or municipality shall not have the power to obligate itself by indenture, ordinance, resolution, mortgage or deed of trust, except with respect to the industrial project or commercial project 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 equity with power to charge and collect rents or other amounts and to apply the revenues from the industrial project or commercial project in accordance with such proceedings or the provisions of such agreement, indenture, mortgage or deed of trust. Any such agreement, indenture, 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 agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders 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, indenture, mortgage or deed of trust shall impose any pecuniary liability upon a county or municipality or any charge upon its general credit or against its taxing powers.

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§13-2C-9. Requirements respecting lease, sale or financing of an industrial project or commercial project.

Prior to the issuance of any bonds, the county commission or the municipality shall enter into an agreement to lease, sell or finance the industrial project or commercial project to a lessee, purchaser or owner, which agreement provides for payment to the county commission or municipality or designated depository of such rentals or amounts as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project as such principal and interest respectively mature, (b) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (c) unless the agreement obligates the lessee, purchaser or owner to pay for the cost of maintaining, repairing and insuring of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. The said agreement shall contain a provision for the revision thereof from time to time, so as to produce sufficient revenue to pay the interest and create a sinking fund sufficient to pay the principal of said bonds when due and to provide for the maintenance, repair and insurance of the industrial project or commercial project unless the latter be assumed by the lessee, purchaser or owner. The said agreement shall also contain such other provisions relating to the industrial project or commercial project and the operation, maintenance and improvement thereof and as to the rights of the parties to said agreement as shall be deemed necessary and advisable by the governmental body.

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§13-2C-10. Redemption of bonds.

The 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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§13-2C-11. 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 or municipality by the issuance of its refunding bonds in such amount as the governing body 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 in the industrial project or commercial project; and 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 any 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 revenues derived from the lease, sale, financing, refinancing, or other disposition of or realization from or upon the industrial project or the commercial project which was acquired, purchased, constructed, built or improved, or financed with the proceeds of the bonds to be refunded, 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 shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of section eight of this article.

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§13-2C-12. 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 purchase of bonds for cancellation or payment of the principal of or the interest on said bonds, or held in reserve for the payment thereof. The cost of acquiring any industrial project or commercial project shall be deemed to include the following: The cost of acquiring any real estate deemed necessary, the actual cost of the construction of any part of an industrial project or commercial project which may be constructed, including architects', engineers', financial or other consultants' and legal fees, the purchase price or rental of any part of a project that may be acquired by purchase or lease, all expense 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 not exceeding twelve months after completion of construction and any other costs and expenses reasonably necessary in the establishment and acquisition of such industrial project or commercial project and the financing thereof.

WV Legislature

§13-2C-13. No contribution by county or municipality.

No county commission or municipality shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring, constructing or financing an industrial project or commercial project, to be acquired, constructed or financed out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county or municipality from accepting donations of property to be used as a part of an industrial project or commercial project or to be used for defraying any part of the cost of any such project. The bonds issued pursuant to this article shall be payable solely from the revenue derived from the industrial project or commercial project or the financing thereof and shall not constitute an indebtedness of the county or of the municipality 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 or municipality within the meaning of the Constitution of West Virginia.

No county commission or municipality shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring, constructing or financing an industrial project or commercial project. However, all necessary preliminary expenses actually incurred by a county commission or a municipality in the making of surveys, taking options, preliminary planning, and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by such governmental body 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.

WV Legislature

§13-2C-14. 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 chapter thirty-one, article fourteen of the Code of West Virginia.

WV Legislature

§13-2C-15. 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 commission or a municipality may acquire to be leased, sold or otherwise disposed of, 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 or municipality.

WV Legislature

§13-2C-16. Construction of article.

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

WV Legislature

§13-2C-17. No notice, consent or publication required.

No notice to or consent or approval by any 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, a 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.

WV Legislature

§13-2C-18. 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.

WV Legislature

§13-2C-19. Public officials exempt from personal liability.

No official or member of a municipality or 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.

WV Legislature

§13-2C-20. Prohibition of financial interest of public officials.

No member of a county commission or the governing body of a municipality issuing revenue bonds under the provisions of this article shall have any financial interest, directly or indirectly, in the leasing, sale or other disposition of an industrial project or commercial project acquired, constructed or financed pursuant to this article.

WV Legislature

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code or under article eighteen, chapter thirty-one of this code, during any calendar year may not exceed the ceiling established by Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391, et seq., of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; and (iii) that it is in the best interest of this state and its citizens to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects. It is hereby further determined and declared as a matter of legislative finding: (i) That the production of bituminous coal in this state has resulted in coal waste which is stored in areas generally referred to as gob piles; (ii) that gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in gob piles to produce alternative forms of energy needs to be encouraged; (iv) that Section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of private activity bonds; and (v) that it is in the best interest of this state and its citizens to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects.

(b) On or before the first day of each calendar year, the Executive Director of the Development Office shall determine the state ceiling for the year based on the criteria of the United States Internal Revenue Code. The annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code as follows:

(1) For the calendar year two thousand one, $50 million and for each subsequent calendar year, forty percent of the state ceiling for that year shall be allocated to the West Virginia Housing Development Fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects;

(2) The amount remaining after the allocation to the West Virginia Housing Development Fund described in subdivision (1) of this subsection shall be retained by the West Virginia

Development Office and shall be referred to in this section as the "state allocation";

(3) Thirty-five percent of the state allocation shall be set aside by the Development Office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests or reservations of funds from projects described in this subsection are submitted to the Development Office on or before November 1, of each calendar year: Provided, however, That on November 15, of each calendar year, the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section; and

(4) Ten percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities under Section 1394 of the United States Internal Revenue Code. All reservations of private activity bonds for the projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests for reservations of funds from projects described in this subsection shall be submitted to the Development Office on or before November 1, of each calendar year: Provided, however, That on November 15, of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(c) The remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That no reservation may be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the Development Office on or before November 1, of each calendar year: Provided further, That on November 15, of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(d) No reservation may be made for any project until the governmental body seeking the reservation submits a notice of reservation of funds as provided in subsection (e) of this section. The governmental body shall first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of the

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inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the Development Office. The notice shall include information required by the Development Office pursuant to any rule of the Development Office. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of: (i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or (ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent the project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the Executive Director of the Development Office: Provided, That no discretionary reservation may be made for any single project described in this subsection in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time considered expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;

(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

(f) The Development Office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the Development Office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first of December following the date of reservation if sooner and a statement of

WV Legislature

bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the bond issue has not been received by the Development Office within that time, then the reservation shall expire and be considered to have been forfeited and the funds reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available for other qualified issues in accordance with this section and the Internal Revenue Code: Provided, That as to any reservation for a nonexempt project or any reservation for a project described in subdivision (4), subsection (b) of this section that is forfeited on or after November 1, in any calendar year, the reservation shall revert to the state allocation for allocation by the industrial revenue bond allocation review committee: Provided, however, That as to any notice of reservation of funds received by the Development Office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the notice relates may not expire or be subject to forfeiture: Provided further, That any unused state ceiling as of December 31, in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia Housing Development Fund which shall be considered to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds upon loss of a reservation pursuant to this section shall be treated in the same manner as a new notice of reservation of funds in accordance with subsections (d) and (e) of this section.

(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to the project until October 1, in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be considered forfeited and the funds reserved are released as provided in said subsection.

WV Legislature

§13-2D-1. Short title.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§13-2E-1. How article cited.

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

WV Legislature

§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.

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§13-2E-12. Tax exemption; exceptions.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§13-2F-1. How article cited.

This article may be cited as "Public Obligations Registration Act."

WV Legislature

§13-2F-2. Purposes; article governs over charter provisions.

The purpose of this article is to provide a mechanism for public bodies in the state to issue public obligations in compliance with section 310(b)(1) of the tax equity and fiscal responsibility act of one thousand nine hundred eighty-two, United States Internal Revenue Code section 103(j), as amended.

To fulfill the purpose, this article shall govern notwithstanding any charter provisions.

WV Legislature

§13-2F-3. Definitions.

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

The term "public body" means any city, town, county commission, building commission, Board of Education, public service district, political subdivision or any other public entity, whether created before, on or after the effective date of this article, and the State of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue public obligations.

The term "public obligation" means notes, bonds, certificates or other obligations of a public body issued and outstanding on and after July 1, 1986.

The term "registered" means, with respect to a public obligation, an obligation the ownership of which is noted on books of registration kept by a registrar and which is represented by certificates or other instruments to which no coupons for interest payments are attached.

The term "book-entry" means, with respect to a public obligation, an obligation the ownership of which is noted on books of registration kept by a registrar, but which ownership is not represented by any instrument.

The term "official registrar" means the official designated by the specific provisions of this code pursuant to which a public obligation is issued as the registrar of the public obligation and, in lieu of statutory designation, the person so designated by the act of the public body authorizing the issuance of the specific public obligation.

WV Legislature

§13-2F-4. Authority to issue public obligations in registered and book entry forms.

Notwithstanding any other provision of this code to the contrary, on and after July 1, 1986, any public body may issue public obligations in registered or book entry form in addition to any form authorized by the specific provisions of this code pursuant to which the public obligations are issued.

WV Legislature

§13-2F-5. Powers of official registrar; designee.

The official registrar shall (a) act as transfer agent or registrar for the exchange or transfer of registered public obligations or maintain the records so that public obligations in book-entry form may be effected, or (b) contract with or otherwise designate a bank, trust company or other person to act as transfer agent or registrar for the registered public obligations or maintain the records so that public obligations in book-entry form may be effected. The bank, trust company or other person may include the federal government or any of its agencies or instrumentalities and may be located or have its principal office within or without the state. Public obligations in book-entry form shall be effected by means of entries on the record of the official registrar or his designee which shall reflect the description of the issue, the principal amount, the interest rate, the maturity date and the owner of the public obligation and other information as is considered by the official registrar or his designee to be appropriate. The official registrar or his designee may effect conversion between book-entry public obligations and registered public obligations for owners of public obligations who request a change. The official registrar or his designee shall issue a confirmation of the transaction in the form of a written advice. The official registrar or his designee shall have such additional powers as are necessary to effectuate the purposes of this article.

WV Legislature

§13-2F-6. Confidentiality.

Notwithstanding any other provision of this code to the contrary, the books of registry held by the official registrar or his designee shall be confidential, and the information contained therein shall not be available to the public.

WV Legislature

§13-2F-7. Application to public obligations approved by voters.

The provisions of this article shall be effective with respect to public obligations which have prior to July 1, 1986, been approved by the voters of the issuer of the public obligations at an election on the question of issuing public obligations in coupon and registered form, or in coupon form only, and the public obligations need not be resubmitted to the voters for the purpose of approving the issuance of the public obligations in registered form only.

WV Legislature

§13-2G-1. Short title.

This article shall be known and may be cited as the "State Refunding Bond Act."

WV Legislature

§13-2G-2. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Bonds" means general obligation bonds, review bonds, notes or other debt instruments issued by the state, a state agency or a state authority.

(b) "Code" means the Code of West Virginia, 1931, as amended.

(c) "Legislature" means the Legislature of this state.

(d) "Refunding bonds" means bonds, notes or other debt instruments issued to refund all or any part of general obligation bonds, revenue bonds, notes or other debt instruments heretofore or hereafter issued or lawfully assumed by the state, a state agency or a state authority pursuant to the provisions of this code.

(e) "State" means the State of West Virginia, a state agency or a state authority.

(f) "State agency" means any office, department, cabinet, board, commission, entity, bureau, division, public corporation, agency, or instrumentality of the state authorized to issue bonds.

(g) "State authority" means any authority authorized to issue bonds, including, but without limitations, the university of West Virginia board of trustees and the board of directors of the state college system.

(h) "Swap agreement" means an agreement which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate opinion, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any similar agreement or any combination of the foregoing.

WV Legislature

§13-2G-3. Issuance of refunding bonds.

The state may, in the manner and subject to the limitations and conditions contained in this article, issue its refunding bonds, at a public or private sale, for the purpose of refunding the bonds of the state then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. A determination by the state that any refunding is advantageous or necessary, or that any of the outstanding obligations should be called for redemption on the first or any subsequent available redemption date or permitted to remain outstanding until their respective dates of maturity, shall be conclusive: Provided, That a determination by the state to issue its refunding bonds as provided in this article is subject to the provisions of the debt management act set forth in article six-a, chapter twelve of this code.

WV Legislature

§13-2G-4. Security for refunding bonds.

Refunding bonds may be secured by a pledge of: (a) The same source of security as the bonds to be refunded; or (b) such other security as the state may lawfully pledge, or both.

WV Legislature

§13-2G-5. Principal amount, use of sinking and reserve funds.

(a) The total amount of refunding bonds to be issued under this chapter shall be an amount sufficient to effect the refunding and may include an amount sufficient to pay (1) the principal amount outstanding of the bonds to be refunded, (2) interest accrued or to accrue to the date of maturity or the date of redemption of the bonds to be refunded (which need not necessarily be on the first available redemption date), (3) any redemption premiums to be paid thereon, (4) any reasonable expenses incurred in connection with such refunding and (5) any other reasonable costs deemed appropriate by the state, including without limitation, the expenses of preparing and delivering the refunding bonds, legal fees, financial advisor fees, consultant fees, and other expenses incurred in connection with the issuance, sale and delivery of the refunding bonds.

(b) Any money in a sinking fund or reserve fund or other fund for the bonds to be refunded may be used to pay the principal of, premium, if any, or interest on the outstanding bonds to be refunded or may be deposited in a sinking fund or reserve fund or other fund for the refunding bonds.

WV Legislature

§13-2G-6. Terms of refunding bonds; time, place and amount of payments.

Upon determining the issue of such refunding bonds, the state shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount permitted by this article, fix the date thereof, the rate or rates of interest which such bonds shall bear and when and where they are payable.

WV Legislature

§13-2G-7. Sale of refunding bonds at above or below par value.

All refunding bonds issued by the state may be sold at a price equal to, above or below par value and accrued interest as the state may direct. Refunding bonds may also be sold at a zero (0) rate of interest or at an original issue discount.

WV Legislature

§13-2G-8. Swap agreements.

The state may from time to time enter into one or more swap agreements that it determines to be necessary or desirable in connection with, or incidental to, or in lieu of the issuance of its refunding bonds. Swap agreements entered into by the state shall contain such provisions, including payment, term, security, default and remedy provisions, and shall be with such parties, as the state shall determine to be necessary or desirable after due consideration to the creditworthiness of such parties.

WV Legislature

§13-2G-9. Certain provisions of the code or act of Legislature to apply to refunding bonds.

All the provisions of this code or any act of the Legislature, relating to bonds issued for original indebtedness and insofar as such provisions may be applicable, shall apply to the same extent and with equal force and effect to refunding bonds issued under the provisions of this article.

WV Legislature

§13-2G-10. Provision for payment of the bonds to be refunded.

(a) It is the intention of this article to authorize the state to issue bonds for the purpose of refunding outstanding bonds without thereby contracting any additional indebtedness, and it shall be conditional upon the delivery of any refunding bonds that sufficient funds are held in trust to provide for the payment of the principal of, premium, if any, and interest on the bonds to be refunded. It is the further intention of this article that any amounts received by the issuance of any refunding bonds pursuant to this article be used solely for the purposes set forth in subsection (a), section five of this article and not be used for incurrence of additional debt.

(b) For all purposes of this section, bonds 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 in trust for the benefit of holders of the bonds to be refunded:

(1) Moneys sufficient to pay when and as due all amounts of principal and interest payable on such bonds; or

(2) Direct obligations of the United States of America or the state, or obligations fully and irrevocably secured as to the payment of both principal and interest by such direct obligations the payment on which when due will provide moneys, sufficient to pay when and as due all amounts of principal and interest payable on such bonds.

(c) All such amounts shall be set aside and held in trust and irrevocably dedicated solely to the payment of such bonds, except that amounts in excess of the amounts required for the payment of the bonds so refunded may be applied to the payment of costs related to the issuance, carrying, insuring or servicing the refunding bonds, including costs of credit or market enhancement services, such as letters of credit, remarketing arrangements and similar services. Any amount deposited pursuant to this section may include amounts already held on deposit in trust for the payment of the bonds to be refunded.

WV Legislature

§13-2G-11. Bonds previously issued by the board of regents.

In connection with or incident to the refunding of any bonds previously issued by the board of regents pursuant to any prior enactment of chapter eighteen of the code, or the board of regents predecessor in interest, the university of West Virginia board of trustees and the board of directors of the state college system, as the transferees of all powers, duties and authorities of the board of regents pursuant to chapter eighteen-b of the code, are authorized to make one or more written agreements with regard to which entity is obligated to provide for the payment of such bonds previously issued by the board of regents and with regard to the allocation of revenues to be dedicated to the payment of refunding bonds.

WV Legislature

§13-2G-12. Article sufficient authority for issuing refunding bonds.

This article shall, without reference to any other act of the Legislature, be full authority for the issuance, sale and exchange of bonds in this article authorized. No order, ordinance, resolution or proceeding in respect to the issuance of any bonds hereunder shall be necessary except such as are required by this article. No publication of any notice, order, ordinance or proceeding relating to the issuance of such bonds shall be necessary.

WV Legislature

§13-2G-13. Issuance without election or creation of a new debt.

The issuance, sale or exchange of bonds authorized in this article may be had without an election and shall not be deemed to create a new debt as long as provision has been made to pay the principal of, premium, if any, and interest on the bonds to be refunded as provided in section seven of this article.

WV Legislature

§13-2G-14. Bonds exempt from taxation.

All bonds of the state, a state agency or state authority issued hereunder shall be exempt from all state, county, and municipal taxes, and the exemption includes income, inheritance and property taxes.

WV Legislature

§13-2H-1. Short title.

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

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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

WV Legislature

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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

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

§13-4-1. Definitions.

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

(1) "Federal subsidy bonds" means any state or local government bonds authorized for sale under the Internal Revenue Code of 1986, as amended, for which a credit payment is available to the issuer or its designee. Certain Build America Bonds authorized under Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), codified at Section 54AA(g) of the Internal Revenue Code of 1986, as amended, are federal subsidy bonds.

(2) "Credit payment" means any payment to an issuer of federal subsidy bonds or its designee authorized under the provisions of the Internal Revenue Code to offset a portion of the interest paid on the bonds. Periodic credit payments received from the United States Secretary of the Treasury, as described in Section 6431(b) of the Internal Revenue Code, are credit payments.

(3) "Government entity" means the State of West Virginia, including any department, division, agency, bureau, board, commission, office or authority thereof, any political subdivision of the State of West Virginia including, but not limited to, any county, municipality or school district, and any other entity authorized by the provisions of this code to issue bonds, notes or other debt obligations.

(4) "General revenue bond" means a bond, note or other debt obligation issued by a government entity for which the government entity has pledged the full faith and credit, including a limited pledge, of such government entity to the repayment of the obligation.

(5) "Special revenue bond" means a bond, note or other debt obligation issued by a government entity for which the government entity pledges a dedicated revenue stream or other security interest to secure the repayment of the obligation.

WV Legislature

§13-4-2. Authority to issue federal subsidy bonds; election of credit payments; treatment of federal subsidy payments; exemption from taxation.

(a) A government entity authorized to issue bonds, notes or other debt obligations under the provisions of this code may issue federal subsidy bonds in the manner, and subject to the requirements, limitations and conditions, set forth in the provisions of the code that authorize the government entity to issue such bonds, notes or other debt obligations. This section may not be construed to grant bonding authority to any government entity or to expand the bonding authority of any government entity.

(b) A government entity that issues federal subsidy bonds may elect to receive credit payments.

(c) Credit payments shall be treated as special revenue in the case of special revenue bonds issued by a government entity or as general revenue in the case of general revenue bonds issued by a government entity. A government entity may use credit payments to pay future debt service on the federal subsidy bonds or for any other purpose allowable by law.

(d) Federal subsidy bonds issued by a government entity under this section shall be exempt from tax in the manner, and subject to the requirements, limitations and conditions, set forth in the provisions of this code that authorize the government entity to issue bonds, notes or other debt obligations.

WV Legislature