WEST VIRGINIA CODE CHAPTER 18 ARTICLE 11E

WV Legislature

§18-11E-1. Definition of board; cost of construction, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University to be financed by revenue bonds or notes.

(a) Notwithstanding the provisions of section one, article one of this chapter, the word "board," when used in this article, means the West Virginia board of regents.

(b) For the purpose of financing the cost of any or all of the following: Constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University, the board periodically may issue negotiable bonds or notes of the state in a principal amount, not in excess of $15 million, which, in the opinion of the board, shall be necessary to finance said cost. Such cost shall include, but not be limited to, the following: The cost of such construction, reconstruction, remodeling, repair, improvement, extension, equipment or furnishings; studies and surveys; plans, specifications, architectural and engineering services; legal, organizational, marketing or other special services; interest and carrying charges prior to, during and for six months after completion of such construction, reconstruction, remodeling, repair, improvement, extension, equipment or furnishing; the costs of issuing the bonds or notes; and a reasonable reserve for payment of the principal of and interest on the bonds or notes.

(c) The board periodically may issue renewal notes of the state, may issue revenue bonds of the state to pay notes and, if it considers refunding expedient, may refund or refund in advance bonds issued by the board by the issuance of new bonds of the state, pursuant to the requirements of section six of this article.

(d) Except as may otherwise be expressly provided by the board, every issue of bonds or notes by it shall be special obligations of the state, payable solely from the revenues or other moneys pledged therefor.

(e) The bonds and the notes shall be authorized by resolution of the board, shall bear such date and shall mature at such time or times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding forty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places and be subject to such terms of redemption as the board may authorize. The bonds and notes may be sold by the board in the manner and at or not less than the price the board determines. The bonds and notes shall be executed by the Governor and the president of the board, both of whom may use facsimile signatures. The great seal of the state or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the Secretary of State, and any coupons attached thereto shall bear the manual or facsimile signature of the president of the board. In case any officer whose signature, or a facsimile of

whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery; and, in case the seal of the state has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

(f) A resolution authorizing bonds or notes or an issue of bonds or notes under this article may contain provisions, which shall be a part of the contract with the holders of the bonds or notes, as to any or all of the following:

(1) With the written approval of the director of athletics at Marshall University, which approval shall be specific as to such moneys pledged, pledging and creating a lien on all or any portion of the moneys derived from admission fees to athletic contests at Marshall University to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or noteholders which then exist;

(2) Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

(3) Setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;

(5) Limitations on the issuance of additional bonds or notes and the terms upon which additional bonds or notes may be issued and secured;

(6) The procedure by which the terms of a contract with the bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which the consent may be given; and

(7) Vesting in a trustee or trustees the property, rights, powers, remedies and duties which the board considers necessary or convenient.

(g) Prior to the preparation of definitive bonds or notes, the board may under like restrictions, issue temporary bonds or notes, with or without coupons, exchangeable for definitive bonds or notes, as the case may be, upon the issuance of the latter.

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§18-11E-2. Trustee for bondholders or noteholders; contents of trust agreement.

In the discretion of the board, any bonds, refunding bonds or notes issued by the board may be secured by a trust agreement between the board and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without the state. Any such trust agreement may contain provisions as set forth in section one of this article with respect to the resolution. All expenses incurred in carrying out such agreement may be treated as a part of the cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facility at Marshall University affected by such agreement.

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§18-11E-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at Marshall University; approval of director of athletics.

Whenever bonds or notes are issued for financing the cost of any or all of the following: Constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University, the board may, with the written approval of the director of athletics at Marshall University, pledge to the payment of the principal of and premium, if any, and interest on said bonds or notes all or any portion of the moneys derived from admission fees to athletic contests and deposited in the athletic accounts at Marshall University: Provided, That said approval of the director of athletics must specify all or any said portions of the moneys to be pledged: Provided, however, That no fees paid by students other than the regular student activity fee may be so pledged.

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§18-11E-4. Enforcement of payment and validity of bonds and notes.

(a) The provisions of this article and any resolution or trust agreement shall continue in effect until the principal of and interest on the bonds or notes of the state issued by the board have been fully paid, and the duties of the board under this article and any resolution or trust agreement shall be enforceable by any bondholder or noteholder by mandamus or other appropriate action in any court of competent jurisdiction.

(b) The resolution authorizing the bonds or notes shall provide that such bonds or notes shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

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§18-11E-5. Pledges; time; liens; recordation.

Any pledge made by the board shall be valid and binding from the time the pledge is made: Provided, That the pledge by the board of all or any portion of the moneys derived from admission fees to athletic contests and deposited into athletic accounts at Marshall University shall be subject to the written approval of the director of athletics at Marshall University. The moneys so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof.

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§18-11E-6. Refunding bonds.

Any bonds issued under the provisions of this article and at any time outstanding may at any time and from time to time be refunded by the board by the issuance of refunding bonds of the state in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes authorized by this article; 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, together with the interest on such proceeds, for the payment of the bonds to be refunded thereby and the interest thereon as the same come due, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds 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 section shall be payable from the revenues out of which the bonds to be refunded thereby were payable, from other moneys or from 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 and shall be secured in accordance with this article.

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§18-11E-7. Purchase and cancellation of bonds or notes.

The board, subject to such agreements with bondholders or noteholders as may then exist, shall have the power, out of any funds available therefor, to purchase bonds, including refunding bonds or notes of the state issued by the board. If the bonds or notes are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the bonds or notes are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption plus accrued interest to such date. Upon such purchase, such bonds or notes shall be canceled.

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§18-11E-8. Federal and private assistance.

The board is authorized and empowered to accept loans or grants or temporary advances for the purpose of paying part or all of the cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University and the other purposes herein authorized from the United States of America or such federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or such federal or public agency or department of the United States or with any private agency, corporation or individual.

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§18-11E-9. Vested rights; impairment.

The state pledges and agrees with the holders of any bonds or notes issued under this article that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of the holders, until the bonds or notes, together with the interest thereon, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The board is authorized to include his pledge and agreement of the state in any agreement with the holders of such bonds or notes.

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§18-11E-10. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.

Bonds, refunding bonds and notes issued under the authority of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of the state or of any county, municipality or any other political subdivision of the state, and the holders and owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of the state for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article: Provided, That notes issued in anticipation of the issuance of bonds or bonds being refunded may be paid from the proceeds of bonds which are payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article. This article does not authorize the board to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or any other political subdivision.

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§18-11E-11. Negotiability of bonds and notes.

Other provisions of this code to the contrary notwithstanding, the bonds or notes authorized to be issued by this article are negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds or notes for registration.

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§18-11E-12. Bonds and notes legal investments.

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, the bonds and notes of the state issued by the board are securities in which all public officers and bodies of the state, including the West Virginia state Board of Investments, all municipalities and other political subdivisions of the state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

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§18-11E-13. Exemption from taxation.

The exercise of the powers granted to the board by this article will be in all respects for the benefit of the students and the faculty and other employees at Marshall University and the other people of the state, for the improvement of their safety, convenience and welfare, and is a public purpose. As the operation and maintenance of the football stadium or other athletic facilities at Marshall University constitute the performance of essential governmental functions, the board shall not be required to pay any taxes or assessments upon any property acquired or used by the board or upon the income therefrom. All bonds and notes of the state issued by the board, and all interest and income thereon, shall be exempt from all taxation by the state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

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§18-11E-14. Article regarded as supplementary.

This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplementary and additional to powers conferred by other laws.

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§18-11E-15. Liberal construction.

This article, being necessary for the safety, convenience and welfare of the students and the faculty and other employees at Marshall University and the other people of the state, shall be liberally construed to effectuate the purposes hereof.

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