

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963



ENROLLED

HOUSE BILL No. 352

(By Mr. Speaker, Mr. Singleton, and Mr. Kidd,



PASSED March 8, 1963

In Effect From Passage



Filed in Office of the Secretary of State
of West Virginia 3-15-63

JOE F. BURDETT
SECRETARY OF STATE

352

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(By MR. SPEAKER, MR. SINGLETON, and MR. KIDD)

[Passed March 8, 1963; in effect from passage.]

AN ACT to amend chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to and authorizing the several counties and the several municipalities in this state to acquire by purchase, construction, or gift, any site, structure, building, fixtures, machinery and equipment, including both real and personal property, which shall be suitable as a factory, mill, shop, processing, assembly, manufacturing, or fabricating plant; to authorize such counties or such municipalities, individually or jointly, to finance the acquisition of such properties by the issuance of negotiable revenue bonds

payable out of the revenues derived from the leasing of such properties for the purpose of operating an industrial plant; to authorize the sale of such plants; to authorize the several counties and the several municipalities to lease such industrial plants subject to certain specified requirements; to authorize the pledging of such revenues and leases to secure the payment of such revenue bonds and interest thereon; to authorize the execution of a mortgage or deed of trust conveying such industrial plant in trust as further security for payment of such bonds and interest thereon; to provide the manner of execution and delivery of such bonds; to provide the manner, form, time and place of payment of said bonds and interest; to provide for the redemption of such bonds; to provide for the refunding of such bonds; to provide for sale of such bonds; to provide for remedies in respect to default in payment thereof; to provide for exemption from taxation of such industrial plants, the revenues derived therefrom, and the bonds and the interest thereon; to prohibit any county or any municipality from making any tax levy as a contribution to the cost of such industrial plant; to provide

that such revenue bonds shall not constitute an indebtedness of the county or the municipality; to provide that such bonds shall be legal investments for financial institutions and insurance companies; to provide the purpose for which the proceeds of such bonds may be used; to provide that no approval by the voters shall be required prior to the issuance of such bonds and to exempt the public officials issuing said bonds from personal liability thereon.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-c, to read as follows:

Article 2-c. The Industrial Development Bond Act.

Section 1. Short Title.—This article may be known as
2 and may be cited as the “Industrial Development Bond
3 Act”.

Sec. 2. Legislative Finding.—It is hereby determined
2 and declared as a matter of legislative finding (a) that
3 critical conditions of unemployment exist in many areas

4 of this state; (b) that lack of employment and business
5 opportunities have resulted in thousands of people leaving
6 this state to find employment elsewhere, and this exodus
7 has adversely affected the tax base of counties and munic-
8 ipalities within this state, resulting in an impairment of
9 their ability to support local government; (c) that the
10 development of new commercial, industrial and manu-
11 facturing plants are essential to relieve unemployment
12 and establish a balanced economy within the state; (d)
13 that the present and prospective health, happiness, safety,
14 right of gainful employment, and general welfare of the
15 citizens of each of the counties and municipalities of this
16 state will be promoted by the establishment of industrial
17 plants as herein provided; (e) and that the means and
18 measures herein authorized for the promotion of indus-
19 trial plants are as a matter of public policy, for the
20 public purpose of the several counties, municipalities
21 and the state of West Virginia.

Sec. 3. Definitions.—The following terms, whenever
2 used in this article, shall have the following meaning:

3 (a) The term “municipality” shall mean any incor-
4 porated town or city.

5 (b) The term "county court" shall mean the govern-
6 mental body created by section twenty-two, article eight
7 of the West Virginia constitution.

8 (c) The term "governmental body" shall mean the
9 county court, the council of a town or city, or any other
10 governing body in lieu thereof.

11 (d) The term "industrial plant" shall mean any site,
12 structure, building, fixtures, machinery, equipment, and
13 related facilities, including both real and personal prop-
14 erty or any combination thereof which shall be suitable
15 as a factory, mill, shop, processing, assembly, manufac-
16 turing, or fabricating plant but not to include facilities
17 designed for sale or distribution to the public of elec-
18 tricity, gas, water, telephone or other services commonly
19 classified as "public utilities".

Sec. 4. Powers Conferred on Counties and Municipal-
2 ities.—In addition to any other powers which a county or
3 municipality may now have, each county, by and through
4 its county court, and each municipality, by and through
5 its council or other governing body in lieu thereof, shall
6 have the following powers: (1) To acquire, whether by

7 purchase, construction, or gift, one or more industrial
8 plants, or additions thereto, which shall be located within
9 this state; (2) to lease to others any or all of its indus-
10 trial plants for such rentals and upon such terms and
11 conditions as the governing body may deem advisable
12 and such governmental body may grant unto its lessee
13 an option to purchase said industrial plant, at the expir-
14 ation of the term of said lease, upon such terms as may
15 be agreed upon; (3) to issue revenue bonds for the pur-
16 pose of defraying the cost of acquiring, by construction
17 and purchase, or by either, an industrial plant, or an
18 addition, extension, or improvement thereto, and to se-
19 cure the payment of such bonds, all as hereinafter pro-
20 vided; and (4) to issue and deliver revenue bonds in
21 exchange for an industrial plant.

Sec. 5. Location of Plant.—Any industrial plant ac-
2 quired by a county, by construction and purchase, or by
3 either, shall be located within the county issuing such
4 revenue bonds and any industrial plant acquired by a
5 municipality, by construction and purchase, or by either,
6 may be situated without or within the corporate bounds

7 of such municipality, but it shall be located within the
8 county in which said municipality is situated, except
9 where a part of such municipality is situated within two
10 or more counties, then said industrial plant may be
11 located within either county of which said municipality
12 forms a part and when an industrial plant is so acquired
13 by a municipality same shall not be located within the
14 corporate bounds of another municipality without the
15 consent of the governing body of such municipality and
16 such industrial plant shall also not be located at a distance
17 greater than ten miles from the corporate boundary of
18 the municipality acquiring the same.

Sec. 6. Joint Establishment by Two or More Govern-
2 **mental Bodies.**—Any two or more governmental bodies
3 may jointly acquire by purchase, construction, or gift,
4 one or more industrial plants or additions thereto by the
5 issuance and delivery of revenue bonds in which case such
6 governmental bodies shall jointly exercise all the rights,
7 authority, power, and duties herein conferred upon a
8 county court or a municipality when acting singly and
9 they shall also be subject to the same limitations, restric-

10 tions, and conditions as are herein imposed on a single
11 governmental body in connection with the acquisition of
12 an industrial plant. The respective governing bodies, act-
13 ing jointly, may provide by agreement among themselves,
14 the terms and conditions of such joint participation.

Sec. 7. Bonds Issued to Finance Industrial Plant.—All
2 bonds issued by a county court or by a municipality under
3 the authority of this article shall be limited obligations
4 of the county, or of the municipality, the principal and
5 interest on which shall be payable out of the revenues
6 derived from the leasing of the plant to finance which the
7 bonds are issued or any other revenue derived from such
8 industrial plant. The bonds and interest coupons issued
9 under the authority of this article shall never constitute
10 an indebtedness of the county, or of the municipality
11 issuing the same, within the meaning of any constitutional
12 provision or statutory limitation and shall never consti-
13 tute or give rise to a pecuniary liability of the county,
14 or of the municipality issuing the same. Neither shall
15 such bond and/or interest thereon be a charge against
16 the general credit or taxing powers of the county, or the

17 municipality and such fact shall be plainly stated on the
18 face of each such bond. Such bonds may be executed,
19 issued and delivered at any time and from time to time,
20 may be in such form and denomination; may be of such
21 tenor, must be negotiable but may be registered as to the
22 principal thereof, may be payable in such amounts and
23 at such time or times; may be payable at such place or
24 places, may bear interest at such rate or rates not to ex-
25 ceed six per cent per annum, payable at such place or
26 places and evidenced in such manner, and may contain
27 such provisions therein not inconsistent herewith, all as
28 shall be provided in the proceedings of the governing
29 body whereunder the bonds shall be authorized to be
30 issued. Said bonds may be sold by the governing body at
31 public or private sale and such sale to be made at a price
32 not lower than a price which, computed upon standard
33 tables of bond values, will have a net return of not more
34 than six per cent per annum to the purchaser upon the
35 amount paid therefor. The said bonds may also be issued
36 and delivered to the owners of an industrial plant in ex-
37 change therefor and in payment of the purchase price
38 thereof.

39 The bonds issued pursuant to this article by a county
40 court shall be signed by the president and attested by the
41 clerk of the county court under the seal of the court and
42 the bonds issued by a municipality shall be signed by the
43 mayor or other chief officer thereof and attested by the
44 clerk, recorder, or other official custodian of the records
45 of said municipality and under the seal of the municipal-
46 ity. The coupons attached thereto shall bear the facsimile
47 signature of the president of the county court or the
48 mayor or other chief officer of the municipality. In case
49 any of the officials whose signatures appear on the bonds
50 or coupons shall cease to be such officers before the
51 delivery of such bonds, such signatures shall, nevertheless,
52 be valid and sufficient for all purposes to the same extent
53 as if they had remained in office until such delivery.

54 If the proceeds of such bonds by error of calculation or
55 otherwise, shall be less than the cost of the industrial
56 plant, additional bonds may in like manner be issued to
57 provide the amount of the deficiency, and unless other-
58 wise provided for in the trust agreement, mortgage, or
59 deed of trust, shall be deemed to be of the same issue,

60 and shall be entitled to payment from the same fund,
61 without preference or priority, and shall be of equal
62 priority as to any security.

Sec. 8. Security for Bonds.—There is hereby created
2 a statutory mortgage lien upon all real estate, buildings,
3 structures, improvements and personal property included
4 as a part of an industrial plant which was acquired, pur-
5 chased, constructed, or built or improved with the pro-
6 ceeds of the bonds authorized to be issued under this
7 article, for the purpose of securing the principal of said
8 bonds and the interest thereon. The principal of and inter-
9 est on any bonds issued under the authority of this article
10 shall be secured by a pledge of the income and revenues
11 derived from the lease of the industrial plant, and also
12 be secured by a pledge of the proceeds of any sale
13 thereof. In the discretion and at the option of the county
14 court or municipality, such revenue bonds may be secured
15 by a trust indenture by and between the county court or
16 the municipality and a corporate trustee, which may be a
17 trust company or bank having trust powers, within or
18 without the state of West Virginia. The governing body

19 may authorize the issuance of such revenue bonds by
20 resolution. The resolution authorizing the revenue bonds
21 and fixing the details thereof, may provide that such trust
22 indenture may contain such provisions for the protection
23 and enforcing the rights and remedies of the bondholders
24 as may be reasonable and proper, not in violation of law,
25 including covenants setting forth the duties of the county
26 court or the municipality in relation to the construction
27 or acquisition of an industrial plant, or part thereof, or
28 an addition thereto, and the improvement, repair, mainte-
29 nance and insurance thereof, and for the custody, safe-
30 guarding and application of all moneys, and may provide
31 that the plant shall be constructed and paid for under
32 the supervision and approval of the consulting engineers
33 or architects, employed and designated by the governing
34 body and satisfactory to the purchasers of the bond, their
35 successors, assigns, or nominees, and the lessee, or either
36 thereof, who may require the security given by any con-
37 tractor and/or any depository of the proceeds of the bonds
38 or the revenues received from the lease or sale of the
39 industrial plant be satisfactory to such purchasers, their

40 successors, assigns, or nominees, and/or be satisfactory
41 to the lessee or purchaser of the industrial plant. Such
42 indenture may set forth the rights and remedies of the
43 bondholders, the county or municipality and/or such
44 trustee and said indenture may provide for accelerating
45 the maturity of the revenue bonds, at the option of the
46 bondholders and/or the governmental body issuing the
47 same, upon default by the lessee in the payment of rentals,
48 or for other cause. The governing body may also provide
49 by resolution and in such trust indenture for the pay-
50 ment of the proceeds of the sale of the bonds and the
51 revenues from the industrial plant to such depository, as
52 it may determine, for the custody thereof and for the
53 method of distribution thereof, with such safeguard and
54 restrictions as it may determine to be necessary or advis-
55 able for the protection thereof and upon the filing of a
56 certified copy of such resolution, or of the indenture
57 agreement for record in the office of the clerk of the
58 county court of any county, in which an industrial plant
59 is located, the same shall have the same effect as to notice,

60 as the recordation of a deed of trust or other recordable
61 instrument.

62 In lieu of the indenture agreement provided for herein-
63 above the principal of and interest on said bonds may be
64 secured by a mortgage or deed of trust covering all or any
65 part of the industrial plant from which the revenues so
66 pledged may be derived and the same may be secured
67 by an assignment of the lease on said industrial plant
68 and by assignment or pledge of the income received by
69 virtue of said lease. The proceedings under which such
70 bonds are authorized to be issued, when secured by a
71 mortgage or deed of trust, may contain the same terms,
72 conditions, and provisions provided for herein when an
73 indenture agreement is entered into between the govern-
74 ing body and a trustee and any such mortgage or deed of
75 trust may contain any agreements and provisions custo-
76 marily contained in instruments securing bonds, includ-
77 ing, without limiting the generality of the foregoing, pro-
78 visions respecting the fixing and collection of rents for
79 any plant covered by such proceedings or mortgage, the
80 terms to be incorporated in the lease of such plant, the

81 maintenance and insurance of such plant, the creation
82 and maintenance of special funds from the revenues re-
83 ceived from the lease of such plant and the rights and
84 remedies available in event of default to the bondholders,
85 the governmental body, or to the trustee under a mort-
86 gage, or deed of trust, all as the governing body shall deem
87 advisable and as shall not be in conflict with the pro-
88 visions of this article or any existing law: *Provided,*
89 *however,* That in making any such agreements or pro-
90 visions a county or municipality shall not have the power
91 to obligate itself by indenture, ordinance, resolution,
92 mortgage, or deed of trust, except with respect to the plant
93 and the application of the revenues therefrom, and shall
94 not have the power to incur a pecuniary liability or a
95 charge upon its general credit or against its taxing
96 powers. The proceedings authorizing any bonds here-
97 under and any indenture, mortgage, or deed of trust
98 securing such bonds may provide that, in the event of
99 default in payment of the principal of or the interest on
100 such bonds or in the performance of any agreement con-
101 tained in such proceedings, indenture, mortgage, or deed

102 of trust, such payment and performance may be en-
103 forced by the appointment of a receiver in equity with
104 power to charge and collect rents and to apply the reve-
105 nues from the plant in accordance with such proceedings
106 or the provisions of such indenture, agreement, mortgage,
107 or deed of trust. Any such mortgage or deed of trust
108 may provide also that, in the event of default in such
109 payment or the violation of any agreement contained in
110 the mortgage or deed of trust, the mortgage or deed of
111 trust may be foreclosed either by sale at public outcry
112 or by proceedings in equity, and may provide that the
113 holder of any of the bonds secured thereby may become
114 the purchaser at any foreclosure sale, if the highest
115 bidder therefor. No breach of any such agreement shall
116 impose any pecuniary liability upon a county or municipi-
117 pality or any charge upon its general credit or against
118 its taxing powers.

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Sec. 9. Requirements Respecting Lease.—Prior to the
2 issuance of any bonds, the county court or the municipal-
3 ity shall lease the industrial plant to a lessee under an
4 agreement providing for payment to the county court or

5 municipality or designated depository of such rentals as
6 will be sufficient (a) to pay the principal of and interest
7 on the bonds issued to finance the plant as such principal
8 and interest respectively mature, (b) to build up and
9 maintain any reserves deemed by the governing body to
10 be advisable in connection therewith, and (c) unless the
11 agreement of lease obligates the lessee to pay for the cost
12 of maintaining, repairing and insuring of the plant to
13 pay the costs of maintaining the plant in good repair
14 and keeping it properly insured. The said lease shall
15 contain a provision for the revision of the lease from time
16 to time, so as to produce sufficient revenue to pay the
17 interest and create a sinking fund sufficient to pay the
18 principal of said bonds when due and to provide for the
19 maintenance, repair, and insurance of the industrial
20 plant unless the latter be assumed by the lessee. The said
21 lease shall also contain such other provisions relating to
22 the industrial plant and the operation, maintenance and
23 improvement thereof and as to the rights of the lessor
24 and lessee thereof as shall be deemed necessary and ad-
25 visable by the governmental body.

Sec. 10. Redemption of Bonds.—The revenue bonds
2 issued pursuant to this article may contain a provision
3 therein to the effect that they, or any of them, may be
4 called for redemption at any time prior to maturity by
5 the governmental body, and at such redemption prices,
6 or premiums, which terms shall be stated in the bond.

Sec. 11. Refunding Bonds.—Any bonds issued here-
2 under and at any time outstanding may at any time and
3 from time to time be refunded by a county or municipal-
4 ity by the issuance of its refunding bonds in such amount
5 as the governing body may deem necessary to refund the
6 principal of the bonds so to be refunded, together with
7 any unpaid interest thereon; to make any improvements
8 or alterations in the industrial plant; and any premiums
9 and commissions necessary to be paid in connection
10 therewith. Any such refunding may be effected whether
11 the bonds to be refunded shall have then matured or
12 shall thereafter mature, either by sale of the refunding
13 bonds and the application of the proceeds thereof for
14 the redemption of the bonds to be refunded thereby, or
15 by exchange of the refunding bonds for the bonds to be

16 refunded thereby: *Provided*, That the holders of any
17 bonds so to be refunded shall not be compelled without
18 their consent to surrender their bonds for payment or
19 exchange prior to the date on which they are payable
20 or, if they are called for redemption, prior to the date
21 on which they are by their terms subject to redemption.
22 Any refunding bonds issued under the authority of this
23 article shall be payable from the revenues out of which
24 the bonds to be refunded thereby were payable, and shall
25 be subject to the provisions contained in section seven
26 of this article and shall be secured in accordance with the
27 provisions of section eight of this article.

Sec. 12. Use of Proceeds from Sale of Bonds.—The
2 proceeds from the sale of any bonds issued under author-
3 ity of this article shall be applied only for the purpose for
4 which the bonds were issued: *Provided, however*, That
5 any accrued interest and premium received in any such
6 sale shall be applied to the payment of the principal of
7 or the interest on the bonds sold: *And provided further*,
8 That if for any reason any portion of such proceeds shall
9 not be needed for the purpose for which the bonds were

10 issued, then such unneeded portion of said proceeds shall
11 be applied to the payment of the principal of or the
12 interest on said bonds, or held in reserve for the payment
13 thereof. The cost of acquiring any plant shall be deemed
14 to include the following: The cost of acquiring any real
15 estate deemed necessary, the actual cost of the construc-
16 tion of any part of a plant which may be constructed,
17 including architects', engineers', financial or other con-
18 sultants', and legal fees; the purchase price of any part
19 of a plant that may be acquired by purchase; all expense
20 incurred in connection with the authorization, sale and
21 issuance of the bonds to finance such acquisition; and the
22 interest on such bonds for a reasonable time prior to
23 construction, during construction, and for not exceeding
24 twelve months after completion of construction and any
25 other cost and expense necessary in the establishment
26 and acquisition of such industrial plant and the financing
27 thereof.

Sec. 13. No Contribution by County or Municipality.—

2 No county court or municipality shall have the power to
3 pay out of its general funds, or otherwise contribute, any

4 of the cost of acquiring or constructing an industrial
5 plant, out of the proceeds from the sale of revenue
6 bonds issued under the authority of this article: *Pro-*
7 *vided, however,* That this provision shall not be con-
8 strued to prevent a county or municipality from ac-
9 cepting donations of property to be used as a part of
10 an industrial plant or any to be used for defraying any
11 part of the cost of any such plant. The bonds issued pur-
12 suant to this article shall be payable solely from the rev-
13 enue derived from the industrial plant and shall not con-
14 stitute an indebtedness of the county or of the municipal-
15 ity within the meaning of any constitutional provision
16 and it shall be plainly stated on the face of each bond
17 that it has been issued under the provisions of this article
18 and that it does not constitute an indebtedness of the
19 county or municipality within the meaning of the consti-
20 tution of West Virginia.

21 No county court or municipality shall have the author-
22 ity under this article to levy any taxes for the purpose of
23 paying any part of the cost of acquiring an industrial
24 plant. However, all necessary preliminary expenses ac-

25 tually incurred by a county court or a municipality in
26 the making of surveys, taking options, preliminary plan-
27 ning, and all other expenses necessary to be paid prior
28 to the issuance, sale, and delivery of the revenue bonds,
30 may be paid by such governmental body out of any sur-
30 plus contained in any item of budgetary appropriation or
31 any revenues collected in excess of anticipated revenues,
32 which shall be reimbursed and repaid out of the proceeds
33 of the sale of the revenue bonds.

Sec. 14. Bonds Made Legal Investments.—Bonds issued
2 under the provisions of this article shall be legal invest-
3 ments for banks, building and loan associations, and in-
4 surance companies organized under the laws of this state
5 and for a business development corporation organized
6 pursuant to chapter thirty-one, article fourteen of the
7 code of West Virginia.

Sec. 15. Exemption from Taxation.—The revenue
2 bonds issued pursuant to this article and the income
3 therefrom shall be exempt from taxation except inheri-
4 tance, estate, and transfer taxes; and the real and personal
5 property which a county court or a municipality may

6 acquire to be leased to an industrial plant according to
7 the provision of this article, shall be exempt from tax-
8 ation by the state, or any county, municipality, or other
9 levying body, as public property, so long as the same is
10 owned by such county or municipality.

Sec. 16. Construction of Article.—Neither this article
2 nor anything herein contained shall be construed as a
3 restriction or limitation upon any powers which a county
4 or municipality might otherwise have under any laws
5 of this state, but shall be construed as alternative or addi-
6 tional; and this article shall not be construed as requir-
7 ing an election by the voters of a county or municipality
8 prior to the issuance of bonds hereunder by such county
9 or municipality, and same shall not be construed as re-
10 quiring any proceeding under any law or laws, other than
11 that which is required by this article.

Sec. 17. No Notice or Publication Required.—No no-
2 tice to or consent or approval by any other governmental
3 body or public officer shall be required as a prerequisite
4 to the issuance or sale of any bonds or the making of any
5 agreement, a mortgage or deed of trust under the author-

6 ity of this article. No publication or notice shall be neces-
7 sary to the validity of any resolution or proceeding had
8 under this article.

Sec. 18. Severability.—If any section, clause, provision
2 or portion of this article shall be held to be invalid or
3 unconstitutional by any court of competent jurisdiction,
4 such holding shall not affect any other section, clause or
5 provision of this article which is not in and of itself un-
6 constitutional.

Sec. 19. Public Officials Exempt from Personal Liabil-
2 **ity.**—No official or member of a municipality or of a
3 county court shall be personally liable on any contract,
4 or obligation executed pursuant to the authority herein
5 contained, nor shall the issuance of bonds hereunder be
6 considered as misfeasance in office.

Sec. 20. Prohibition of Financial Interest of Public
2 **Officials.**—No member of a county court or the governing
3 body of a municipality issuing revenue bonds under the
4 provisions of this article shall have any financial inter-
5 est, directly or indirectly, in the leasing of an industrial
6 plant acquired or constructed pursuant to this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clay Parker
Chairman Senate Committee

Edell L. Randall
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Meyer
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard Holman
President of the Senate

Julius W. Singleton Jr.
Speaker House of Delegates

The within approved this the 14th
day of March, 1963.

W. B. Bann
Governor

