

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

Com. Sub. for
SENATE BILL NO. 387

(By Mr. *Carson* [Mr. President] and
Mr. *Brooks* original sponsor)

PASSED March 11, 1967

In Effect *for* Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67

#387

ENROLLED
JUDICIARY
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 387

(MR. CARSON [MR. PRESIDENT] and MR. BOWLING
original sponsors)

[Passed March 11, 1967; 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-d, relating to and authorizing the several counties in this state to finance the acquisition of any real or personal property necessary for the acquisition, construction, equipment, improvement, maintenance and operation of a public airport with all usual and convenient appurtenances and facilities by the issuance of negotiable revenue bonds payable out

of certain revenues derived from the operation of such airport and certain other revenues derived therefrom; to authorize the pledging of certain of such revenues to secure the payment of such revenue bonds and interest thereon; to authorize the execution of a mortgage or deed of trust conveying such airport 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 the sale of such bonds; to provide for exemption from taxation of such airports, the revenues derived therefrom, and the bonds and the interest thereon; to authorize the barring of airport appurtenances and facilities; to prohibit any county from making any tax levy as a contribution to the cost of such airport financing pursuant to said article; to provide that such revenue bonds shall not constitute an indebtedness of the county; 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-d, to read as follows:

ARTICLE 2D. AIRPORT DEVELOPMENT BOND ACT.

§13-2D-1. Short title.

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

§13-2D-2. Legislative finding.

It is hereby determined and declared as a matter of
2 legislative finding (a) that the development of air-
3 ports is essential to the further social and economic
4 growth of this state; (b) that the present and prospective
5 health, happiness, safety, right of gainful employment and
6 general welfare of the citizens of each of the counties of

7 this state will be promoted by the establishment of air-
8 ports as herein provided; and (c) that the means and
9 measures herein authorized for the promotion of airports
10 are as a matter of public policy, for the public purposes of
11 the several counties and the state of West Virginia.

§13-2D-3. Definitions.

The following terms, whenever used in this article,
2 shall have the following meaning:

3 (a) The term "county court" shall mean a governing
4 body created pursuant to section twenty-two of article
5 eight of the constitution of this state and any other gov-
6 erning body established in lieu thereof pursuant to section
7 twenty-nine, article eight, of the constitution of this state.

8 (b) The term "airport" shall mean all real and per-
9 sonal property necessary for the acquisition, construction,
10 equipment, improvement, maintenance or operation of a
11 public facility for the taking off and landing of airplanes,
12 and all appurtenances and facilities usual and convenient
13 in connection with such facility for the convenience and
14 accommodation of the inhabitants of the county and the
15 public generally, and shall include airports for the use
16 of aircraft as described elsewhere in this code.

§13-2D-4. Powers conferred on counties.

In addition to the powers which counties have with re-
 2 spect to airports pursuant to the other provisions of this
 3 code, each county, by and through its county court, shall
 4 have the following powers: (1) to issue revenue bonds
 5 for the purpose of defraying the cost or any part thereof,
 6 of acquiring, by construction and purchase, or by either,
 7 an airport, or an addition, extension or improvement
 8 thereto, and to secure the payment of such bonds, all as
 9 hereinafter provided; and (2) to issue and deliver revenue
 10 bonds in exchange for an airport or a private facility for
 11 the taking off and landing of airplanes with appurtenant
 12 facilities and conveniences.

§13-2D-5. Bonds issued to finance airport.

All bonds issued by a county court under the authority
 2 of this article shall be limited obligations of the county,
 3 the principal of and interest on which shall be payable out
 4 of the revenues derived from the operation of the airport
 5 for which the bonds are issued or any other revenue
 6 derived from such airport, less operating and mainte-
 7 nance costs and expenses. The bonds and interest coupons

8 issued under the authority of this article shall never con-
9 stitute evidence of indebtedness of the county issuing the
10 same within the meaning of any constitutional provision
11 or statutory limitation and shall never constitute or give
12 rise to a pecuniary liability of the county issuing the same.
13 Neither shall such bonds and interest thereon be a
14 charge against the general credit or taxing powers of the
15 county and such fact shall be plainly stated on the face
16 of each such bond. Such bonds may be executed, issued
17 and delivered at any time, and from time to time may be
18 in such form and denomination, may be of such tenor,
19 must be negotiable but may be registered as to the prin-
20 cipal thereof, may be payable in such amounts and at
21 such time or times, may be payable at such place or
22 places, may bear interest at such rate or rates not to
23 exceed six per cent per annum, payable at such place or
24 places and evidenced in such manner, and may contain
25 such provisions therein not inconsistent herewith, all as
26 shall be provided in the proceedings of the county
27 court whereunder the bonds shall be authorized to be
28 issued. Said bonds may be sold by the county court at

29 public or private sale and such sale shall be made at a
30 price not lower than a price which, computed upon stand-
31 ard tables of bond values, will have a net return of not
32 more than six per cent per annum to the purchaser upon
33 the amount paid therefor. The said bonds may also be
34 issued and delivered to the owners of an airport or private
35 facility for the landing and taking off of airplanes with
36 appurtenant facilities and conveniences in exchange there-
37 for and in payment of the purchase price thereof.

38 The bonds issued pursuant to this article by a county
39 court shall be signed by the president of the county court
40 and attested by the clerk of the county court under the
41 seal of the court. The coupons attached thereto shall bear
42 the facsimile signature of the president of the county
43 court. In case any of the officials whose signatures appear
44 on the bonds or coupons shall cease to be such officers be-
45 fore the delivery of such bonds, such signatures shall,
46 nevertheless, be valid and sufficient for all purposes to the
47 same extent as if they had remained in office until such
48 delivery.

49 If the proceeds of such bonds, by error of calculation
50 or otherwise, shall be less than the cost of the airport,
51 additional bonds may in like manner be issued to provide
52 the amount of the deficiency, and unless otherwise pro-
53 vided for in the trust agreement, mortgage, or deed of
54 trust, shall be deemed to be of the same issue, and shall
55 be entitled to payment from the same fund, without
56 preference or priority, and shall be of equal priority as to
57 any security.

§13-2D-6. Security for bonds.

There is hereby created a statutory mortgage lien upon
2 all real estate, buildings, structures, improvements and
3 personal property included as a part of an airport which
4 is acquired, purchased, constructed, or built or improved
5 with the proceeds of bonds authorized to be issued under
6 this article, for the purpose of securing the principal of
7 said bonds and the interest thereon. The principal of and
8 interest on any bonds issued under the authority of this
9 article shall be secured by a pledge of the income and
10 revenues derived from the operation of the airport and
11 any other revenue derived from such airport, less the

12 operating and maintenance costs and expenses, and also
13 be secured by a pledge of the proceeds of any sale thereof.
14 In the discretion and at the option of the county court,
15 such revenue bonds may be secured by a trust indenture
16 by and between the county court and a corporate trustee,
17 which may be a trust company or bank having trust
18 powers, within or without the state of West Virginia. The
19 county court may authorize the issuance of such revenue
20 bonds by order or resolution. The order or resolution
21 authorizing the revenue bonds and fixing the details
22 thereof may provide that such trust indenture may con-
23 tain such provisions for the protection and enforcement
24 of the rights and remedies of the bondholders as may be
25 reasonable and proper, and not in violation of law, in-
26 cluding covenants setting forth the duties of the county
27 court in relation to the construction or acquisition of an
28 airport, or part thereof, or an addition thereto, and the
29 improvement, operation, repair, maintenance and insur-
30 ance thereof, and for the custody, safeguarding and ap-
31 plication of all moneys, and may provide that the airport
32 shall be constructed and paid for under the supervision

33 and approval of the consulting engineers or architects
34 employed and designated by the county court and satis-
35 factory to the purchasers of the bonds, their successors,
36 assigns or nominees, who may require the security given
37 by any contractor and/or any depository of the proceeds
38 of the bonds or the revenues received from the operation
39 or sale of the airport to be satisfactory to such purchasers,
40 their successors, assigns or nominees, and/or be satisfac-
41 tory to the purchaser of the airport. Such indenture may
42 set forth the rights and remedies of the bondholders, the
43 county and/or such trustee and said indenture may pro-
44 vide for accelerating the maturity of the revenue bonds,
45 at the option of the bondholders upon default by the
46 county court issuing the same in the payment of the
47 principal of said bonds or the interest thereon. The county
48 court may also provide by order or resolution and in
49 such trust indenture for the payment of the proceeds
50 of the sale of the bonds and the revenues from the air-
51 port to such depository as it may determine for the
52 custody thereof and for the method of distribution there-
53 of, with such safeguards and restrictions as it may de-

54 termine to be necessary or advisable for the protection
55 thereof and upon the filing of a certified copy of such
56 order or resolution, or of the indenture agreement for
57 record in the office of the clerk of the county court of
58 any county in which an airport is located the same shall
59 have the same effect as to notice as the recordation of a
60 deed of trust or other recordable instrument.

61 In lieu of the indenture agreement provided for here-
62 inabove the principal of and interest on said bonds may
63 be secured by a mortgage or deed of trust covering all
64 or any part of the airport from which the revenues so
65 pledged may be derived and the same may be secured by
66 an assignment or pledge of the revenue received from
67 the airport, less operating and maintenance costs and ex-
68 penses. The proceedings under which such bonds are au-
69 thorized to be issued, when such bonds are to be secured
70 by a mortgage or deed of trust, may contain the same
71 terms, conditions and provisions provided for herein when
72 an indenture agreement is entered into between the coun-
73 ty court and a trustee, and any such mortgage or deed of
74 trust may contain any agreements and provisions custom-

75 arily contained in instruments securing bonds, including,
76 without limiting the generality of the foregoing, provi-
77 sions respecting the fixing and collection of revenue for
78 any airport covered by such proceedings or mortgage, the
79 terms to be incorporated in the agreement with respect
80 to such airport, the maintenance and insurance of such
81 airport, the creation and maintenance of special funds
82 from the revenues received from such airport and the
83 rights and remedies available to the bondholders, the
84 county court or to the trustee under such mortgage or
85 deed of trust, in event of default, all as the county court
86 shall deem advisable and as shall not be in conflict
87 with the provisions of this article or any existing law:
88 *Provided*, That in making any such agreements or pro-
89 visions a county shall not have the power to obligate
90 itself by indenture, order, resolution, mortgage or deed
91 of trust, except with respect to the airport and the appli-
92 cation of the revenues therefrom, and shall not have the
93 power to incur a pecuniary liability or a charge upon its
94 general credit or against its taxing powers. The proceed-
95 ings authorizing any bonds hereunder and any indenture,

96 mortgage or deed of trust securing such bonds may pro-
97 vide that, in the event of default in payment of the
98 principal of or the interest on such bonds or in the per-
99 formance of any agreement contained in such proceed-
100 ings, indenture, mortgage or deed of trust, such payment
101 and performance may be enforced by the appointment
102 of a receiver in a civil action with power to charge and
103 collect revenue and to apply the revenues from the air-
104 port in accordance with such proceedings or the pro-
105 visions of such indenture, agreement, mortgage or deed
106 of trust. Any such mortgage or deed of trust may pro-
107 vide also that, in the event of default in such payment
108 or the violation of any agreement contained in the mort-
109 gage or deed of trust, the mortgage or deed of trust may
110 be foreclosed either by sale at public outcry or by pro-
111 ceedings in a civil action, and may provide that the holder
112 of any of the bonds secured thereby may become the
113 purchaser at any foreclosure sale, if the highest bidder
114 therefor. No breach of any such agreement shall impose
115 any pecuniary liability upon a county or any charge upon
116 its general credit or against its taxing powers.

§13-2D-7. Redemption of bonds.

Revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any
3 of them, may be called for redemption at any time prior
4 to maturity by the county court, and at such redemption
5 prices, or premiums, which terms shall be stated in the
6 bonds.

§13-2D-8. Refunding bonds.

Any bonds issued hereunder and at any time outstand-
2 ing may at any time and from time to time be refunded
3 by a county by the issuance of its refunding bonds in
4 such amount as the county court may deem necessary to
5 refund the principal of the bonds so to be refunded, to-
6 gether with any unpaid interest thereon; to make any im-
7 provements or alterations to the airport; and to pay any
8 premiums and commissions necessary to be paid in con-
9 nection therewith. Any such refunding may be effected
10 whether the bonds to be refunded shall have then ma-
11 tured or shall thereafter mature, either by sale of the
12 refunding bonds and the application of the proceeds
13 thereof for the redemption of the bonds to be refunded

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

§13-2D-9. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the
3 purpose for which the bonds were issued: *Provided*, That
4 any accrued interest and premium received in any such
5 sale shall be applied to the payment of the principal of
6 or the interest on the bonds sold: *Provided, however*,
7 That if for any reason any portion of such proceeds shall

8 not be needed for the purpose for which the bonds were
9 issued, then such unneeded portion of said proceeds shall
10 be applied to the payment of the principal of or the inter-
11 est on said bonds, or held in reserve for the payment
12 thereof. The cost of acquiring any airport shall be deemed
13 to include the following: The cost of acquiring any real
14 estate or personal property deemed necessary, the actual
15 cost of the construction of any part of the airport and
16 appurtenances and facilities 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 the airport and appurtenances and facilities that may
20 be acquired by purchase; all expenses incurred in connec-
21 tion with the authorization, sale and issuance of the bonds
22 to finance such acquisition; and the interest on such bonds
23 for a reasonable time prior to construction, during con-
24 struction, and for a period not exceeding twelve months
25 after completion of construction and any other cost and
26 expense necessary to the establishment and acquisition of
27 such airport and the financing thereof.

§13-2D-10. No contribution by county.

No county court shall have the power to pay out of its
 2 general funds, or otherwise contribute, any of the cost of
 3 acquiring or constructing an airport or its appurtenances
 4 and facilities, which is to be financed out of the proceeds of
 5 the sale of revenue bonds issued under the authority of
 6 this article: *Provided*, That this provision shall not be con-
 7 strued to prevent a county from paying for the acqui-
 8 sition of property for an airport or for the construction,
 9 equipment, improvement, maintenance and operation of
 10 any airport pursuant to other provisions of this code so
 11 long as any such acquisition of property or the construc-
 12 tion, equipment, improvement, maintenance and opera-
 13 tion of such airport is not financed by the proceeds from
 14 the sale of revenue bonds issued under the authority of
 15 this article: *Provided, however*, That this provision shall
 16 not be construed to prevent a county from accepting do-
 17 nations of property to be used as a part of any such air-
 18 port. The bonds issued pursuant to this article shall be
 19 payable solely from the revenue derived from the airport,
 20 less operating and maintenance cost and expenses, and

21 shall not constitute an indebtedness of the county within
22 the meaning of any constitutional provision and it shall
23 be plainly stated on the face of each bond that it has
24 been issued under the provisions of this article and that
25 it does not constitute an indebtedness of the county within
26 the meaning of the constitution of West Virginia.

27 No county court shall have the authority under this
28 article to levy any taxes for the purpose of paying any
29 part of the cost of acquiring an airport to be financed
30 under the provisions of this article. However, all neces-
31 sary preliminary expenses actually incurred by a county
32 court in the making of studies, surveys, taking options,
33 preliminary planning, and all other expenses necessary
34 to be paid prior to the issuance, sale and delivery of
35 the revenue bonds, may be paid by such county court
36 out of any surplus contained in any item of budgetary
37 appropriation or any revenues collected in excess of an-
38 ticipated revenues, which shall be reimbursed and repaid
39 out of the proceeds of the sale of the revenue bonds.

§13-2D-11. Bonds made legal investments.

Bonds issued under the provisions of this article shall
2 be legal investments for banks, building and loan associ-

3 ations, and insurance companies organized under the laws
4 of this state and for a business development corporation
5 organized pursuant to chapter thirty-one, article fourteen
6 of the code of West Virginia.

§13-2D-12. Exemption from taxation.

The revenue bonds issued pursuant to this article and
2 the income therefrom shall be exempt from taxation ex-
3 cept inheritance, estate and transfer taxes; and the real
4 and personal property which a county court may acquire
5 for an airport according to the provisions of this article
6 shall be exempt from taxation by the state, or any
7 county, municipality or other levying body, as public
8 property, so long as the same is owned by such county.

§13-2D-13. County court may lease appurtenances and facilities.

County courts may lease all or any part of the appur-
2 tenances and facilities of airports, including but not lim-
3 ited to any space in the airport terminal building or
4 hangars, or any other areas for automobile parking, or
5 any other areas for restaurant, hotel or motel purposes,
6 to any available lessee or lessees at such rentals and

7 upon such terms and conditions as to the county courts
8 shall seem proper. All such leases shall be for some pur-
9 pose associated with airport activities.

§13-2D-14. Construction of article.

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

§13-2D-15. No notice, consent or publication required.

No notice to or consent or approval by any other county
2 court, other governmental body or public officer shall be
3 required as a prerequisite to the issuance or sale of any
4 bonds or the making of any agreement, mortgage or deed
5 of trust under the authority of this article. No publication
6 or notice shall be necessary to the validity of any resolu-
7 tion or proceeding had under this article.

§13-2D-16. Severability.

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

§13-2D-17. Public officials exempt from personal liability.

No official or member of a county court shall be per-
2 sonally liable on any contract or obligation executed
3 pursuant to the authority herein contained, nor shall the
4 issuance of bonds hereunder be considered as misfeasance
5 in office.

§13-2D-18. Prohibition of financial interest of public officials.

No member of a county court issuing revenue bonds
2 under the provisions of this article shall have any finan-
3 cial interest, directly or indirectly, in an airport acquired
4 or constructed pursuant to this article.

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

William Tempner
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Thomas H. Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. Laban White
Speaker House of Delegates

The within approved this the 21
day of March, 1967.

H. L. Smith
Governor

PRESENTED TO THE
GOVERNOR

Date 3/31/67

Time 2:20 pm