

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 58

(By Mr. Hubbard)

PASSED March 7, 1969

In Effect Ninety days from Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-17-69

#58

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Senate Bill No. 58

(By MR. HUBBARD)

[Passed March 7, 1969; in effect ninety days 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-e, relating to and authorizing the issuance by any city, town, village, county, public service district, sanitary district, political subdivision and any other public entity, and the state, of refunding bonds for the purpose of refunding any outstanding revenue bonds whether or not such outstanding revenue bonds are at the time due or optional for redemption; providing for the payment and security of such refunding bonds; providing for the retirement of revenue bonds being refunded; and providing for and making other provisions pertinent to the foregoing.

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-e, to read as follows:

ARTICLE 2E. REVENUE BOND REFUNDING ACT.

§13-2E-1. How article cited.

1 This article may be cited as “Revenue Bond Refunding
2 Act.”

§13-2E-2. Definitions.

1 The following terms or words wherever used or referred
2 to in this article shall have the following meaning, unless
3 a different meaning plainly appears from the context:

4 The term “public body” shall mean any city, town,
5 village, county, public service district, sanitary district,
6 political subdivision or any other similar public entity
7 now or hereafter created, and the state of West Virginia
8 acting through any of its agencies, boards, commissions or
9 departments, having power to issue revenue bonds.

10 The term “governing body” shall mean board, council
11 or other body having power to borrow money on behalf
12 of a public body.

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

16 The term "enterprise" shall mean any work, under-
17 taking, or project which the public body is or may here-
18 after be authorized to acquire or construct and from
19 which the public body has heretofore derived or may
20 hereafter derive revenues, for the refinancing of which
21 enterprise refunding bonds are issued under this article,
22 and such enterprise shall include all improvements,
23 betterments, extensions and replacements thereto, and
24 all appurtenances, facilities, lands, rights in land, water
25 rights, franchises, and structures in connection therewith
26 or incidental thereto.

27 The term "revenues" shall mean all fees, tolls, rates,
28 rentals and charges to be levied and collected in connec-
29 tion with and all other income and receipts of whatever
30 kind or character derived by the public body from the
31 operation of any enterprise or arising from any enterprise,
32 and including earnings derived from investments and
33 bank deposits.

34 The term "revenue bonds" shall mean notes, bonds,
35 certificates or other obligations of a public body hereto-
36 fore or hereafter issued and outstanding under any law
37 and which by their terms are payable from the revenues
38 derived by such public body from the operation of an
39 enterprise.

40 The term "refunding bonds" shall mean notes, bonds,
41 certificates or other obligations of a public body issued
42 pursuant to this article.

43 The term "holder of bonds" or "bondholder" or any
44 similar term shall mean any person who shall be the bear-
45 er of any outstanding refunding bond or refunding bonds
46 registered to bearer or not registered, or the registered
47 owner of any such outstanding refunding bond or re-
48 funding bonds which shall at the time be registered
49 other than to bearer.

50 The words "net interest cost" when referring to an
51 outstanding issue of revenue bonds to be refunded, shall
52 mean the total amount of interest which would accrue on
53 such revenue bonds from the date of the refunding bonds
54 to the respective maturity dates of the outstanding reve-

55 nue bonds to be refunded, without regard to any retained
56 options of redemption.

57 The words "net interest cost" when referring to a pro-
58 posed issue of refunding bonds, shall mean the total
59 amount of interest to accrue on the refunding bonds from
60 their date to their respective maturities, without regard
61 to any retained options of redemption, plus the amount
62 of any discount below par or less the amount of any pre-
63 mium above par at which the bonds may be sold.

64 The words "net effective interest rate" when referring
65 to a proposed issue of refunding bonds, shall mean the
66 net interest cost of said refunding bonds divided by the
67 product obtained by multiplying the aggregate principal
68 amount of such refunding bonds maturing on each
69 maturity date by the number of years from the date of
70 the refunding bonds to their respective maturities, with-
71 out regard to any retained options of redemption.

72 The term "certified public accountant" shall mean an in-
73 dependent certified public accountant or firm of certified
74 public accountants licensed to practice in this state.

75 Words importing the singular number shall include the
76 plural number in each case and vice versa, and words
77 importing persons shall include firms and corporations.

§13-2E-3. Authority to refund.

1 Any public body may issue refunding bonds for the
2 purpose of refunding all or any part of its revenue
3 bonds now or hereafter outstanding, whether or not such
4 revenue bonds are at the time of the refunding due
5 or optional for redemption, under the circumstances and
6 restrictions set forth in this article. Refunding bonds
7 shall be payable from revenues derived from the same
8 enterprise as the revenue bonds to be refunded except
9 where the public body has outstanding revenue bonds
10 payable from the revenues of an enterprise and is au-
11 thorized under any other law to combine and consolidate
12 such enterprise with another enterprise and issue reve-
13 nue bonds payable from the revenues of the combined
14 and consolidated enterprises. An issue of refunding bonds
15 may refund part or all of one or more issues of out-
16 standing revenue bonds: *Provided*, That part or all of
17 two or more issues of outstanding revenue bonds may not

18 be refunded under this article unless either (a) all of
19 the issues of outstanding revenue bonds to be refunded
20 are payable from revenues derived from the same en-
21 terprise, or (b) the public body is authorized under any
22 other law to combine or consolidate the enterprises in
23 question and issue revenue bonds payable from the
24 revenues of the combined or consolidated enterprises.
25 Refunding bonds may be issued hereunder whenever
26 the governing body of the public body deems it ex-
27 pedient.

§13-2E-4. Refunding bond details.

1 Refunding bonds authorized under this article may be
2 issued in one or more series, may bear such date or
3 dates, may mature at such time or times, not later than
4 the date of final maturity of the bonds to be refunded
5 and not exceeding the period of usefulness of the enter-
6 prise, as determined by the governing body in its dis-
7 cretion, nor in any event exceeding forty years from
8 their respective dates; may bear interest at such rate
9 or rates; may be in such denomination or denomi-
10 nations; may be in such form either coupon or

11 registered; may carry such registration and con-
12 version privileges; may be executed in such man-
13 ner; may be payable in such medium of payment,
14 at such place or places; may be subject to such
15 terms of redemption, with or without a premium;
16 may be declared or become due before the maturity
17 date; may provide for the replacement of mutilated,
18 destroyed, stolen or lost bonds; may be authenticated
19 in such manner and upon compliance with such condi-
20 tions; and may contain such other terms and covenants,
21 as may be determined by the governing body in the
22 proceedings authorizing the refunding bonds. Notwith-
23 standing the form or tenor thereof, and in the absence
24 of an express recital on the face thereof that the bond
25 is nonnegotiable, all refunding bonds shall at all times
26 be, and shall be treated as, negotiable instruments for
27 all purposes.

§13-2E-5. Issuance of refunding bonds.

1 Refunding bonds issued under this article may be
2 exchanged for not less than a like principal amount of
3 the revenue bonds to be refunded, or may be sold at

4 public or private sale, or may be exchanged in part and
5 sold in part, in such manner and upon such terms as
6 may be determined by the governing body to be for
7 the best interests of the public body: *Provided, That*
8 such refunding bonds shall not be sold or exchanged
9 at a price lower than a price which will show a net saving
10 to the issuer after deducting all expenses of the refund-
11 ing.

12 If any such refunding bonds are to be sold, they may
13 be issued in such principal amount as may be deter-
14 mined advisable by the governing body including, without
15 limitation, the aggregate principal amount of the revenue
16 bonds to be refunded, interest accrued and to accrue
17 to the date or dates on which the revenue bonds being
18 refunded are scheduled to mature or to be redeemed
19 prior to maturity, any redemption premiums which must
20 be paid in order to refund such outstanding revenue
21 bonds and any costs and expenses of issuing the re-
22 funding bonds and providing for retirement of revenue
23 bonds to be refunded. If sold, the net proceeds shall either
24 be immediately applied to the payment or redemption

25 and retirement of the revenue bonds to be refunded,
26 or the net proceeds of the refunding bonds may be invested
27 at the discretion and under the supervision of the escrow
28 agent in whole, or in part, (a) in direct obligations issued
29 by the United States of America or one of its agencies, (b)
30 in obligations unconditionally guaranteed by the United
31 States of America as to principal and interest, or (c) in cer-
32 tificates of deposit of a banking corporation or association
33 which is a member of the federal deposit insurance corpor-
34 ation, or successor; but any such certificates of deposit must
35 be fully secured as to both principal and interest by pledged
36 collateral consisting of direct obligations of or obligations
37 guaranteed by the United States of America having a mar-
38 ket value, excluding accrued interest, at all times at least
39 equal to the amount of the principal of and accrued inter-
40 est on such certificates of deposit. Any such investments
41 must mature, or be payable in advance of maturity at
42 the option of the holder, and must bear interest in such
43 manner as to provide funds which, together with un-
44 invested money placed in the hereinafter mentioned
45 escrow, will be sufficient to pay when due or called

46 for redemption the revenue bonds refunded, together
47 with interest accrued and to accrue thereon and redemp-
48 tion premiums, if any, and such refunding bond pro-
49 ceeds or obligations so purchased therewith shall, and
50 with other funds legally available to the public body
51 for such purpose may, be deposited in escrow with the
52 state sinking fund commission to be held in trust for
53 the payment and redemption of the revenue bonds re-
54 funded, and such money and obligations and any re-
55 investment thereof shall be held in trust by such escrow
56 agent for the payment of interest on the refunded bonds
57 when due, and principal thereof and applicable redemp-
58 tion premiums, if any, when due, or upon the date or dates
59 for which they shall have been called for redemption, or
60 upon an earlier voluntary surrender at the option of the
61 escrow agent; provided if interest earned by any
62 investment in such escrow are shown to be in excess
63 of the amounts required from time to time for the
64 payment of interest on and principal of the refunded
65 revenue bonds, including applicable redemption premium,
66 then such excess may be withdrawn from escrow and

67 disbursed by the public body as are other revenues of
68 the enterprise. Any moneys in the sinking or reserve
69 funds or other funds maintained for the outstanding
70 revenue bonds to be refunded may be applied in the
71 same manner and for the same purpose as are the net
72 proceeds of refunding bonds or may be deposited in
73 the special fund or any reserve funds established for
74 account of the refunding bonds. The term "net pro-
75 ceeds" as used above shall mean the gross proceeds of
76 the refunding bonds after the deduction therefrom of
77 all accrued interest, costs and expenses incurred in con-
78 nection with the authorization and issuance of the re-
79 funding bonds and the retirement of the outstanding
80 revenue bonds, and including all costs and expenses
81 resulting from price variations to par or otherwise in-
82 curred in the purchase of obligations for escrow and
83 in the disposition of the refunding bonds.

§13-2E-6. Determination to be conclusive.

1 The determination by the governing body of any public
2 body issuing refunding bonds under this article that the
3 limitations herein imposed upon the issuance of refund-

4 ing bonds have been met, shall be conclusive: *Provided,*
5 *however,* That such public body shall have obtained
6 from an independent certified public accountant a certi-
7 fication that the amount of saving stated to be achieved by
8 the refunding shall in fact be served, based upon his re-
9 view, comparison and analysis of the net interest cost in
10 dollars of the refunding bonds and the net interest cost
11 in dollars of the bonds to be refunded.

§13-2E-7. Authorization for issuance.

1 Refunding bonds and all acts required to be authorized
2 hereunder shall be authorized in the manner in which the
3 bonds to be refunded were authorized and issued.

§13-2E-8. Authority for escrow agreement.

1 The governing body of any public body shall have
2 power to enter into such escrow agreements and to insert
3 therein such protective and other covenants and provi-
4 sions as it may consider necessary to permit the carrying
5 out of the provisions of this article and to insure the
6 prompt payment of principal of and interest and redemp-
7 tion premiums on the revenue bonds refunded.

§13-2E-9. Call of revenue bonds for redemption.

1 Where any revenue bonds to be refunded are not to
2 be surrendered for exchange or payment and are not to
3 be paid at maturity with escrowed obligations, but are to
4 be paid from such source prior to maturity pursuant to
5 call for redemption exercised under a right of redemption
6 reserved in such revenue bonds, the governing body of
7 the public body shall, prior to the issuance of the refund-
8 ing bonds, determine which redemption date or dates
9 shall be used, call such revenue bonds for redemption
10 and provide for the giving of the notice of redemption
11 required by the proceedings authorizing such revenue
12 bonds. Where such notice is to be given at a time subse-
13 quent to the issuance of the refunding bonds, the neces-
14 sary notices may be deposited with the state sinking fund
15 commission or the bank acting as escrow agent of the
16 refunding bond proceeds and the escrow agent appro-
17 priately instructed and authorized to give the required
18 notices at the prescribed time or times. If any officer of
19 the public body signing any such notice shall no longer
20 be in office at the time of the utilization of the notice,

21 the notice shall nevertheless be valid and effective for
22 its intended purpose.

§13-2E-10. Security provisions.

1 Refunding bonds shall be special obligations of the
2 public body and shall be payable solely from and secured
3 by a lien upon the gross revenues or net revenues of the
4 enterprise, as shall be more fully described in the ordinance
5 or resolution authorizing the issuance of refunding bonds,
6 and the ordinance or resolution authorizing such refunding
7 bonds shall provide for a special fund into which there shall
8 be pledged a fixed amount or a fixed proportion of such rev-
9 enues which shall be sufficient to pay the principal of and
10 interest on the refunding bonds as the same become due.

11 In order to assure payment of the principal and in-
12 terest on any refunding bonds it shall be the duty of
13 the governing body of the public body to establish, levy,
14 maintain and collect such fees, tolls, rentals, rates and
15 other charges for the services of such enterprise as shall
16 be necessary to produce revenues sufficient, after making
17 due and reasonable allowance for contingencies and for a
18 margin of error in estimates, to pay at all times principal

19 of and interest on the refunding bonds as the same be-
20 come due, to pay current expenses of operation and
21 maintenance, to provide for depreciation, to provide for
22 reserves for any of the foregoing, to comply in all respects
23 with any contract or agreement with bondholders set
24 forth in the ordinance or resolution authorizing such re-
25 funding bonds, and to meet any other obligations of the
26 public body which by their terms are charges, liens, or
27 encumbrances upon the revenues of such enterprise.

28 The ordinance or resolution authorizing any refunding
29 bonds may contain such covenants with the holders of the
30 refunding bonds as to the efficient management and opera-
31 tion of the enterprise; the collection, keeping and disposition
32 of the revenues of the enterprise; the issuance of additional
33 refunding bonds or revenue bonds; the carrying of in-
34 surance on such enterprise and the disposition of in-
35 surance proceeds; the keeping of books and records and
36 the auditing thereof; the inspection by bondholders at
37 reasonable times of the enterprise and the records, ac-
38 counts and data of the public body relating thereto;
39 limitations upon the sale or other disposition of integral

40 parts of the enterprise; the discontinuance of the services
41 and facilities of the enterprise upon failure to pay for
42 such services and facilities; the appointment and duties
43 of a trustee; the rights, liabilities, powers and duties
44 arising upon the breach by the public body of any coven-
45 ants, conditions or obligations contained in the ordinance
46 or resolution authorizing the issuance of such refunding
47 bonds; remedies of bondholders upon default in the pay-
48 ment of the principal of or interest on any refunding
49 bonds, including the appointment by a court of competent
50 jurisdiction of a receiver for the operation and manage-
51 ment of the enterprise and the collection and disburse-
52 ment of the revenues thereof, but such receiver or any
53 court having jurisdiction in the matter shall not be per-
54 mitted to sell, mortgage or otherwise dispose of any assets
55 of the enterprise and useful in its operation or cause
56 any of such assets to be sold, mortgaged or otherwise
57 disposed of; and any other conditions, acts or pertinent
58 matters as may be deemed necessary or proper by the
59 governing body of the public body to assure efficient
60 operation of the enterprise, payment of the refunding

61 bonds and marketability of the refunding bonds upon
62 favorable terms. Any agreement or covenant contained
63 in the ordinance or resolution authorizing such refunding
64 bonds shall constitute a contract with the holders of such
65 refunding bonds.

66 All refunding bonds of the same issue shall be equally
67 and ratably secured, without priority by reason of num-
68 ber, date or time of sale, execution or delivery, by a
69 lien upon the revenues of the enterprise in accordance with
70 the provisions of this section and the ordinance or reso-
71 lution authorizing the issuance of such refunding bonds.

72 Nothing in this section or in any other section of
73 this article shall be deemed in any way to alter the terms
74 of any agreements made with the holders of any out-
75 standing revenue bonds of the public body, or to authorize
76 the public body to alter the terms of any such agreements,
77 or to impair, or authorize the public body to impair, the
78 rights and remedies of any creditors of the public body.

79 Nothing in this section or in any other section of this
80 article shall be deemed in any way to authorize any
81 public body to do anything in any manner or for any

82 purpose which would result in the creation or incurring
83 of a debt or indebtedness or the issuance of any instru-
84 ment which would constitute a bond or debt within the
85 meaning of any provision, limitation, or restriction of the
86 constitution relating to the creation or incurring of a
87 debt or indebtedness or the issuance of an instrument
88 constituting a bond or a debt.

§13-2E-11. Payable solely from revenues of enterprise.

1 No recourse shall be had for the payment of the refund-
2 ing bonds, or interest thereon, or any part thereof, against
3 the general fund of any public body, nor shall the credit
4 or taxing power of any public body be deemed to be
5 pledged thereto.

6 The refunding bonds, and interest thereon, shall not be
7 a debt of the public body, nor a charge, lien or encum-
8 brance, legal or equitable, upon any property of the public
9 body, nor upon any income, receipts, or revenues of the
10 public body other than such of the revenues of the enter-
11 prise as shall have been pledged to the payment thereof,
12 and every refunding bond shall recite in substance that
13 said bond, including interest thereon, is payable solely

14 from the revenues pledged to the payment thereof and
15 that the public body is under no obligation to pay the
16 same, except from said revenues.

§13-2E-12. Tax exempt; exceptions.

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

§13-2E-13. Validity.

1 Refunding bonds bearing the signatures of officers of
2 the public body in office on the date of the signing thereof
3 shall be valid and binding obligations of the public body
4 for all purposes, notwithstanding that before the delivery
5 thereof any or all the persons whose signatures appear
6 thereon shall have ceased to be officers of the public body,
7 the same as if such persons had continued to be officers
8 of the public body until after the delivery thereof. The
9 ordinance or resolution authorizing any refunding bonds
10 may provide that such refunding bond may contain a re-
11 cital that such refunding bond is issued pursuant to this
12 article, and any refunding bond containing such recital un-
13 der authority of any such ordinance or resolution shall be

14 conclusively deemed to be valid and to have been issued
15 in conformity with the provisions of this article.

16 Where any refunding bonds have been heretofore
17 authorized by any public body which would have been
18 valid under and in compliance with the provisions of this
19 article had this article been in existence at the time of
20 the authorization of such refunding bonds, such refunding
21 bonds if heretofore issued, and if not yet issued then such
22 refunding bonds when they shall have been issued, and
23 the proceedings authorizing their issuance, are hereby
24 validated, ratified and confirmed and declared to be bind-
25 ing and enforceable obligations in accordance with their
26 terms.

§13-2E-14. Article complete authority for refunding bonds.

1 This article constitutes full and complete authority
2 for the issuance of refunding bonds. No procedure or
3 proceedings, publications, notices, consents, approvals,
4 orders, acts or things by any governing body of any
5 public body, or any board, officer, commission, depart-
6 ment, agency, or instrumentality of the state or any
7 public body shall be required to issue any refunding

8 bonds or to do any act or perform any thing under
9 this article, except as may be prescribed in this article.
10 The powers conferred by this article shall be in addi-
11 tion and supplemental to, and not in substitution for,
12 and the limitations imposed by this article shall not
13 affect, the powers conferred by any other law. This article
14 is remedial in nature and shall be liberally construed.

§13-2E-15. Severability.

1 If any one or more provisions of this article or the
2 applicability thereof to any persons or circumstances are
3 ever held by a final decision of a court of competent
4 jurisdiction to be invalid, such invalidity shall not affect
5 any other provision or provisions, application or appli-
6 cations of this article, and to this end, the provisions of
7 this article are declared to be severable.

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

William Tompau
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Meyer
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Lloyd G. Jackson
President of the Senate

Ira F. Bailey
Speaker House of Delegates

The within *approved* this the *17th*
day of *March*, 1969.

Arch. Shouse Jr
Governor



PRESENTED TO THE
GOVERNOR

Date 3/13/69

Time 3:15 p.m.