WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 58

(By Mr. 

PASSED ................... JULY 1, 1969

In Effect ................... ninety days from Passage

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


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


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

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

The term "governing body" shall mean board, council or other body having power to borrow money on behalf of a public body.
The term "law" shall mean any act or statutes, general, special or local, of this state, including, without being limited to, the charter of any public body.

The term "enterprise" shall mean any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

The term "revenues" shall mean all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the public body from the operation of any enterprise or arising from any enterprise, and including earnings derived from investments and bank deposits.
The term "revenue bonds" shall mean notes, bonds, certificates or other obligations of a public body heretofore or hereafter issued and outstanding under any law and which by their terms are payable from the revenues derived by such public body from the operation of an enterprise.

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

The term "holder of bonds" or "bondholder" or any similar term shall mean any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding refunding bond or refunding bonds which shall at the time be registered other than to bearer.

The words "net interest cost" when referring to an outstanding issue of revenue bonds to be refunded, shall mean the total amount of interest which would accrue on such revenue bonds from the date of the refunding bonds to the respective maturity dates of the outstanding reve-
nue bonds to be refunded, without regard to any retained
options of redemption.

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

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

The term "certified public accountant" shall mean an in-
dependent certified public accountant or firm of certified
public accountants licensed to practice in this state.
Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

§13-2E-3. Authority to refund.

1 Any public body may issue refunding bonds for the purpose of refunding all or any part of its revenue bonds now or hereafter outstanding, whether or not such revenue bonds are at the time of the refunding due or optional for redemption, under the circumstances and restrictions set forth in this article. Refunding bonds shall be payable from revenues derived from the same enterprise as the revenue bonds to be refunded except where the public body has outstanding revenue bonds payable from the revenues of an enterprise and is authorized under any other law to combine and consolidate such enterprise with another enterprise and issue revenue bonds payable from the revenues of the combined and consolidated enterprises. An issue of refunding bonds may refund part or all of one or more issues of outstanding revenue bonds: Provided, That part or all of two or more issues of outstanding revenue bonds may not
be refunded under this article unless either (a) all of
the issues of outstanding revenue bonds to be refunded
are payable from revenues derived from the same en-
terprise, or (b) the public body is authorized under any
other law to combine or consolidate the enterprises in
question and issue revenue bonds payable from the
revenues of the combined or consolidated enterprises.

Refunding bonds may be issued hereunder whenever
the governing body of the public body deems it ex-
pedient.


1 Refunding bonds authorized under this article may be
2 issued in one or more series, may bear such date or
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-
prise, as determined by the governing body in its dis-
cretion, nor in any event exceeding forty years from
7 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
registered; may carry such registration and con-
version privileges; may be executed in such man-
ner; may be payable in such medium of payment,
at such place or places; may be subject to such
terms of redemption, with or without a premium;
may be declared or become due before the maturity
date; may provide for the replacement of mutilated,
destroyed, stolen or lost bonds; may be authenticated
in such manner and upon compliance with such condi-
tions; and may contain such other terms and covenants,
as may be determined by the governing body in the
proceedings authorizing the refunding bonds. Notwith-
standing the form or tenor thereof, and in the absence
of an express recital on the face thereof that the bond
is nonnegotiable, all refunding bonds shall at all times
be, and shall be treated as, negotiable instruments for
all purposes.


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
and retirement of the revenue bonds to be refunded, or the net proceeds of the refunding bonds may be invested at the discretion and under the supervision of the escrow agent in whole, or in part, (a) in direct obligations issued by the United States of America or one of its agencies, (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest, or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money placed in the hereinafter mentioned escrow, will be sufficient to pay when due or called
for redemption the revenue bonds refunded, together
with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bond proceeds or obligations so purchased therewith shall, and
with other funds legally available to the public body
for such purpose may, be deposited in escrow with the
state sinking fund commission to be held in trust for
the payment and redemption of the revenue bonds refunded, and such money and obligations and any reinvestment thereof shall be held in trust by such escrow agent for the payment of interest on the refunded bonds when due, and principal thereof and applicable redemption premiums, if any, when due, or upon the date or dates for which they shall have been called for redemption, or upon an earlier voluntary surrender at the option of the escrow agent; provided if interest earned by any investment in such escrow are shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded revenue bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and
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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-
Provided, however, That such public body shall have obtained from an independent certified public accountant a certification that the amount of saving stated to be achieved by the refunding shall in fact be served, based upon his review, comparison and analysis of the net interest cost in dollars of the refunding bonds and the net interest cost in dollars of the bonds to be refunded.


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

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

1 The governing body of any public body shall have power to enter into such escrow agreements and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of principal of and interest and redemption premiums on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the governing body of the public body shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state sinking fund commission or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice,
the notice shall nevertheless be valid and effective for
its intended purpose.


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

The ordinance or resolution authorizing any refunding
bonds may contain such covenants with the holders of the
refunding bonds as to the efficient management and opera-
tion of the enterprise; the collection, keeping and disposition
of the revenues of the enterprise; the issuance of additional
refunding bonds or revenue bonds; the carrying of in-
surance on such enterprise and the disposition of in-
surance proceeds; the keeping of books and records and
the auditing thereof; the inspection by bondholders at
reasonable times of the enterprise and the records, ac-
counts and data of the public body relating thereto;
limitations upon the sale or other disposition of integral
parts of the enterprise; the discontinuance of the services and facilities of the enterprise upon failure to pay for such services and facilities; the appointment and duties of a trustee; the rights, liabilities, powers and duties arising upon the breach by the public body of any covenants, conditions or obligations contained in the ordinance or resolution authorizing the issuance of such refunding bonds; remedies of bondholders upon default in the payment of the principal of or interest on any refunding bonds, including the appointment by a court of competent jurisdiction of a receiver for the operation and management of the enterprise and the collection and disbursement of the revenues thereof, but such receiver or any court having jurisdiction in the matter shall not be permitted to sell, mortgage or otherwise dispose of any assets of the enterprise and useful in its operation or cause any of such assets to be sold, mortgaged or otherwise disposed of; and any other conditions, acts or pertinent matters as may be deemed necessary or proper by the governing body of the public body to assure efficient operation of the enterprise, payment of the refunding
bonds and marketability of the refunding bonds upon
favorable terms. Any agreement or covenant contained
in the ordinance or resolution authorizing such refunding
bonds shall constitute a contract with the holders of such
refunding bonds.

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

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

Nothing in this section or in any other section of this
article shall be deemed in any way to authorize any
public body to do anything in any manner or for any
purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or a debt.


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

2. The refunding bonds, and interest thereon, shall not be a debt of the public body, nor a charge, lien or encumbrance, legal or equitable, upon any property of the public body, nor upon any income, receipts, or revenues of the public body other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely
from the revenues pledged to the payment thereof and
that the public body is under no obligation to pay the
same, except from said revenues.

§13-2E-12. Tax exempt; exceptions.

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


Refunding bonds bearing the signatures of officers of
the public body in office on the date of the signing thereof
shall be valid and binding obligations of the public body
for all purposes, notwithstanding that before the delivery
thereof any or all the persons whose signatures appear
thereon shall have ceased to be officers of the public body,
the same as if such persons had continued to be officers
of the public body until after the delivery thereof. The
ordinance or resolution authorizing any refunding bonds
may provide that such refunding bond may contain a re-
cital that such refunding bond is issued pursuant to this
article, and any refunding bond containing such recital un-
der authority of any such ordinance or resolution shall be
conclusively deemed to be valid and to have been issued in conformity with the provisions of this article.

Where any refunding bonds have been heretofore authorized by any public body which would have been valid under and in compliance with the provisions of this article had this article been in existence at the time of the authorization of such refunding bonds, such refunding bonds if heretofore issued, and if not yet issued then such refunding bonds when they shall have been issued, and the proceedings authorizing their issuance, are hereby validated, ratified and confirmed and declared to be binding and enforceable obligations in accordance with their terms.


This article constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts or things by any governing body of any public body, or any board, officer, commission, department, agency, or instrumentality of the state or any public body shall be required to issue any refunding
bonds or to do any act or perform any thing under
this article, except as may be prescribed in this article.
The powers conferred by this article shall be in addi-
tion and supplemental to, and not in substitution for,
and the limitations imposed by this article shall not
affect, the powers conferred by any other law. This article
is remedial in nature and shall be liberally construed.
If any one or more provisions of this article or the
applicability thereof to any persons or circumstances are
ever held by a final decision of a court of competent
jurisdiction to be invalid, such invalidity shall not affect
any other provision or provisions, application or appli-
cations of this article, and to this end, the provisions of
this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Julia H. Thayer  
Clerk of the Senate

O. A. Lankford  
Clerk of the House of Delegates

Lloyd B. Jackson  
President of the Senate

Warren G. Bryan  
Speaker House of Delegates

The within  
Approved this the 17th  

day of March, 1969.

Richard L. Byrne  
Governor
PRESENTED TO THE GOVERNOR

Date 3/13/69
Time 3:15 p.m.