

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

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## ENROLLED

SENATE BILL NO. 58

(By Mr. Hubbard)

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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

**ENROLLED**  
**Senate Bill No. 58**  
**(By MR. HUBBARD)**

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[Passed March 7, 1969; in effect ninety days from passage.]

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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 Tompa  
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. A. Blankenship  
Clerk of the House of Delegates

Lloyd B. Jackson  
President of the Senate

Ira F. Bailey  
Speaker House of Delegates

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

Arch. A. Shreve Jr.  
Governor





PRESENTED TO THE  
GOVERNOR

Date 3/13/69

Time 3:15 p.m.