WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED
Committee Select.
HOUSE BILL No. 754

(Passed by Mr. Speaker, Mr. Benham)
Mr. Seibert

PASSED March 8, 1974
In Effect from Passage

FED IN THE OFFICE
EDGAR E. STEWART, TRE
SECRETARY OF STATE
THIS DATE 3/24/74
AN ACT to amend article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b; and to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of said code, relating to municipalities, municipal public works and revenue bond financing; specifying that the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the state of West Virginia, the county court of any county and any agency, board or commission of any thereof; specifying that the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from a motor vehicle parking facility; relating to public bonded indebtedness; extending the industrial development bond act to include commercial projects; providing a new title for such act; setting forth certain legislative findings and defining terms with respect
to such act; conferring powers on counties and municipalities with respect to industrial projects and commercial projects and the issuance of revenue bonds therefor; relating to the location of industrial projects and commercial projects; relating to the joint establishment of industrial projects or commercial projects or additions thereto; relating to revenue bonds issued to finance industrial projects or commercial projects; specifying that a debt of a county or municipality may not be created in connection with an industrial project or commercial project; providing details with respect to the provisions, issuance and execution of such revenue bonds; relating to the issuance of additional revenue bonds; providing a statutory mortgage lien and the pledging of revenues from such industrial project or commercial project as security for such revenue bonds; also authorizing a trust indenture, mortgage or deed of trust as security for such revenue bonds; relating to resolutions authorizing the issuance of such revenue bonds; relating to the provisions to be contained in any such trust indenture, mortgage or deed of trust; authorizing the appointment of a receiver; relating to foreclosure proceedings; establishing certain requirements respecting the lease of an industrial project or commercial project and the contents of any such lease; relating to refunding bonds; relating to the use of proceeds from the sale of all revenue bonds issued under article two-c; prohibiting contributions by counties and municipalities from their general funds or otherwise in the establishment of an industrial project or commercial project; specifying that all such revenue bonds shall be paid solely from the revenue derived from the industrial project or commercial project; providing exemptions from taxation; and prohibiting any financial interest of public officials in any such industrial project or commercial project.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-b; and that sections one, two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of said code be amended and reenacted, all to read as follows:
CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

For all purposes of this article, the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the state of West Virginia, the county court of any county of the state of West Virginia, and any agency, board or commission of any thereof, and the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from such motor vehicle parking facility.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


This article may be known as and may be cited as the 'Industrial Development and Commercial Development Bond Act.'

§13-2C-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding (a) that critical conditions of unemployment exist in many areas of this state; (b) that lack of employment and business opportunities have resulted in thousands of people leaving this state to find employment elsewhere, and this exodus has adversely affected the tax base of counties and municipalities within this state, resulting in an impairment of their ability to support local government; (c)
that the development of new commercial, mining, industrial
and manufacturing projects are essential to relieve unem­
ployment and establish a balanced economy within the
state; (d) that the present and prospective health, happiness,
safety, right of gainful employment and general welfare
of the citizens of each of the counties and municipalities of
this state will be promoted by the establishment of industrial
projects and commercial projects as herein provided; (e) that
the means and measures herein authorized for the promotion
of industrial projects and commercial projects are, as a matter
of public policy, for the public purpose of the several counties,
municipalities and the state of West Virginia; (f) that the
abatement or control of pollution of the environment of the
state is necessary to protect the health and welfare of the
citizens of the state, to protect the natural resources of
the state and to encourage the economic development of the
state; and (g) that in addition to the development of new
industrial projects and commercial projects the retention of
existing industrial projects and commercial projects within the
state through the means and measures herein authorized is vital
to the maintenance of a balanced economy and for the preser­
vation of employment within the state and is for the public
purpose of the several counties, municipalities and the state
of West Virginia.

§13-2C-3 Definitions.

Unless the context clearly indicates otherwise, as used
in this article:

(a) "Commercial project" means real or personal property
or both, including any buildings, improvements, additions,
extensions, replacements, appurtenances, lands, rights in land,
water rights, franchises, machinery, equipment, furnishings,
landscaping, utilities, railroad spurs and sidings, parking facili­
ties, parking wharfs, approaches and roadways or any number
or combination of the foregoing necessary or desirable in con­
nection therewith or incidental thereto and includes, without
limiting the generality of the foregoing, hotels and motels and
related facilities, nursing homes and other health care facilities,
facilities for participatory or spectator sports, conventions or
trade show facilities, airport facilities, shopping centers, office
buildings, residential real property for family units, and mass
commuting facilities.

(b) “County court” means the governmental body created
by section twenty-two, article eight of the West Virginia con-
stitution.

c) “Governmental body” means the county court, a town
or city council or any other governing body in lieu thereof.

d) “Industrial project” means any site, structure, building,
industrial park, water dock, wharf or port facilities, fixtures,
machinery, equipment and related facility, including real and
personal property, or any combination thereof, suitable as a
factory, mill or shop, or processing, assembly, manufacturing
or fabricating project, or warehouse or distribution facility, or
facilities for the extraction, production or distribution of mineral
resources and related facilities, or sewage or solid waste dis-
posal facilities, or facilities for the local furnishing of electric
energy or gas, or facilities for the furnishing of water, if
available on reasonable demand to members of the general
public, or storage or training facilities related to any of the
foregoing, or research or development facility or pollution
abatement or control facility and includes the reconstruction,
modernization and modification of any existing industrial proj-
ext for the abatement or control of industrial pollution.

(e) “Industrial pollution” means any gaseous, liquid or
solid waste substances or adverse thermal effects or combina-
tions thereof resulting from any process of industry, manu-
facturing, trade or business or from the development, pro-
cessing or recovery of any natural resources which pollute the
land, water or air of this state.


In addition to any other powers which a county or munici-
pality may now have, each county, by and through its county
court, and each municipality, by and through its council or
other governing body in lieu thereof, shall have the following
powers: (1) to acquire, whether by purchase, construction,
or gift, one or more industrial projects or commercial projects,
or additions thereto, which shall be located within this state;
(2) to lease to others any or all of its industrial projects or
commercial projects for such rentals and upon such terms and conditions as the governing body may deem advisable and such governmental body may grant unto its lessee an option to purchase said industrial project or commercial project, at the expiration of the term of said lease, upon such terms as may be agreed upon; (3) to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, or by either, an industrial project or commercial project, or an addition, extension, or improvement thereto, and to secure the payment of such bonds, all as hereinafter provided; and (4) to issue and deliver revenue bonds in exchange for an industrial project or commercial project.

§13-2C-5. Location of project.

Any industrial project or commercial project acquired by a county, by construction and purchase, or by either, shall be located within the county issuing such revenue bonds and any industrial project or commercial project acquired by a municipality, by construction and purchase, or by either, may be situated without or within the corporate bounds of such municipality, but it shall be located within the county in which said municipality is situated, except where a part of such municipality is situated within two or more counties, then said industrial project or commercial project may be located within either county of which said municipality forms a part and when an industrial project or commercial project is so acquired by a municipality the same shall not be located within the corporate bounds of another municipality without the consent of the governing body of such municipality and such industrial project or commercial project shall also not be located at a distance greater than ten miles from the corporate boundary of the municipality acquiring the same.

§13-2C-6. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire by purchase, construction or gift, one or more industrial projects or commercial projects or additions thereto by the issuance and delivery of revenue bonds in which case such governmental bodies shall jointly exercise all the rights, authority, power and duties herein conferred upon a county court or a municipality when acting singly and they shall also be subject to the same
limitations, restrictions and conditions as are herein imposed on
a single governmental body in connection with the acquisition
of an industrial project or commercial project. The respective
governing bodies, acting jointly, may provide by agreement
among themselves, the terms and conditions of such joint parti-
cipation.

§13-2C-7. Bonds issued to finance industrial project or commercial
project.

All bonds issued by a county court or by a municipality
under the authority of this article shall be limited obligations
of the county, or of the municipality. The principal and interest
on such bonds shall be payable out of the revenues derived from
the leasing of the project for which the bonds are issued, or any
other revenue derived from such industrial project or commer-
cial project. The bonds and interest coupons issued under the
authority of this article shall never constitute an indebtedness
of the county, or of the municipality issuing the same, within
the meaning of any constitutional provision or statutory
limitation and shall never constitute or give rise to a pecuniary
liability of the county, or of the municipality issuing the
same. Neither shall such bond nor interest thereon be a
charge against the general credit or taxing powers of the
county, or the municipality and such fact shall be plainly
stated on the face of each such bond. Such bonds may be
executed, issued and delivered at any time and from time
to time, may be in such form and denomination; may be of
such tenor, must be negotiable but may be registered as to
the principal thereof or as to the principal and interest thereof,
may be payable in such amounts and at such time or times;
may be payable at such place or places, may bear interest
at such rate or rates payable at such place or places and
evidenced in such manner, and may contain such provisions
therein not inconsistent herewith, all as shall be provided in
the proceedings of the governing body whereunder the bonds
shall be authorized to be issued. Said bonds may be sold by
the governing body at public or private sale at, above or
below par as the governing body shall authorize. The said
bonds may also be issued and delivered to the owner of an in-
dustrial project or commercial project in exchange therefor and
in partial or complete payment of the purchase price thereof.
The bonds issued pursuant to this article by a county court shall be signed by the president and attested by the clerk of the county court under the seal of the court and the bonds issued by a municipality shall be signed by the mayor or other chief officer thereof and attested by the clerk, recorder or other official custodian of the records of said municipality and under the seal of the municipality. The coupons attached thereto shall bear the facsimile signature of the president of the county court or the mayor or other chief officer of the municipality. In case any of the officials whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery.

If the proceeds of such bonds by error of calculation or otherwise, shall be less than the cost of the industrial project or commercial project, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement, mortgage or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.


There is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an industrial project or commercial project which was acquired, purchased, constructed or built or improved with the proceeds of the bonds authorized to be issued under this article, for the purpose of securing the principal of said bonds and the interest thereon. The principal of an interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the lease of the industrial project, and also be secured by a pledge of the proceeds of any sale thereof. In the discretion and at the option of the county court or municipality, such revenue bonds may also be secured by a trust indenture by and between the county court
or the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the state of West Virginia. The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the county court or the municipality in relation to the construction or acquisition of an industrial project or commercial project, or part thereof, or an addition thereto, and the improvement, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the industrial project or commercial project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the governing body and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, and the lessee or either thereof, who may require the security given by any contractor or any depository of the proceeds of the bonds or the revenues received from the lease or sale of the industrial project or commercial project be satisfactory to such purchasers, their successors, assigns or nominees, or be satisfactory to the lessee or purchaser of the industrial project or commercial project. Such indenture may set forth the rights and remedies of the bondholders, the county or municipality or such trustee and may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the governmental body issuing the same, upon default by the lessee in the payment of rentals, or for other cause. The governing body may also provide by resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the industrial project or commercial project to such depository as it may determine, for the custody thereof and for the method of distribution thereof, with such safeguards and restrictions as it may determine to be necessary or advisable for the protection thereof and upon the filing of a certified copy of such resolution or of the indenture for record in the office of the clerk of the county court of the county in which an industrial project or commercial project is
located, the same shall have the same effect, as to notice, as the
recording of a deed of trust or other recordable instrument.

In lieu of the indenture provided for hereinabove the principal of and interest on said bonds may be secured by a mortgage
or deed of trust covering all or any part of the industrial project
or commercial project from which the revenues so pledged may
be derived, and the same may be secured by an assignment of
the lease on said industrial project or commercial project and by
assignment or pledge of the income received by virtue of said
lease. The proceedings under which such bonds are authorized
to be issued, when secured by a mortgage or deed of trust, may
contain the same terms, conditions and provisions provided for
herein when an indenture is entered into between the governing
body and a trustee and any such mortgage or deed of trust may
contain any agreements and provisions customarily contained in
instruments securing bonds, including, without limiting the gen-
erality of the foregoing, provisions respecting the fixing and col-
lection of rents for any industrial project or commercial project
covered by such proceedings or mortgage, the terms to be incor-
porated in the lease of such industrial project or commercial
project, the improvement, repair, maintenance and insurance of
such industrial project or commercial project, the creation and
maintenance of special funds from the revenues received from
the lease of such industrial project or commercial project and
the rights and remedies available in event of default to the
bondholders, the governmental body, or to the trustee under an
agreement, indenture, mortgage, or deed of trust, all as the
governing body shall deem advisable and as shall not be in con-
lict with the provisions of this article or any existing law: Pro-
vided, That in making any such agreements or provisions a
county or municipality shall not have the power to obligate it-
self by indenture, ordinance, resolution, mortgage or deed of
trust, except with respect to the industrial project or commer-
cial project and the application of the revenues therefrom, and
shall not have the power to incur a pecuniary liability or a
charge upon its general credit or against its taxing powers. The
proceedings authorizing any bonds hereunder and any inden-
ture, mortgage or deed of trust securing such bonds may provide
that, in the event of default in payment of the principal of or the
interest on such bonds or in the performance of any agreement
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contained in such proceedings, indenture, mortgage or deed of
trust, such payment and performance may be enforced by the
appointment of a receiver in equity with power to charge and
collect rents and to apply the revenues from the industrial proj-
et or commercial project in accordance with such proceedings
or the provisions of such agreement, indenture, mortgage or
deed of trust. Any such agreement, indenture, mortgage or deed
of trust may provide also that, in the event of default in such
payment or the violation of any agreement contained in the
mortgage or deed of trust, the agreement, indenture, mortgage
or deed of trust may be foreclosed either by sale at public out-
cry or by proceedings in equity and may provide that the holder
or holders of any of the bonds secured thereby may become the
purchaser at any foreclosure sale, if the highest bidder therefor.
No breach of any such agreement, indenture, mortgage or deed
of trust shall impose any pecuniary liability upon a county or
municipality or any charge upon its general credit or against its
taxing powers.

§13-2C-9. Requirements respecting lease of industrial project or
commercial project.

Prior to the issuance of any bonds, the county court or the
municipality shall lease the industrial project or commercial
project to a lessee under an agreement providing for payment to
the county court or municipality or designated depository of
such rentals as will be sufficient (a) to pay the principal of and
interest on the bonds issued to finance the project as such prin-
cipal and interest respectively mature, (b) to build up and
maintain any reserves deemed by the governing body to be ad-
visable in connection therewith, and (c) unless the agreement
or lease obligates the lessee to pay for the cost of maintaining,
repairing and insuring of the project, to pay the costs of main-
taining the project in good repair and keeping it properly in-
sured. The said lease shall contain a provision for the revision
of the lease from time to time, so as to produce sufficient
revenue to pay the interest and create a sinking fund sufficient
to pay the principal of said bonds when due and to provide for
the maintenance, repair and insurance of the industrial project
or commercial project unless the latter be assumed by the
lessee. The said lease shall also contain such other provisions
relating to the industrial project or commercial project and the

21 operation, maintenance and improvement thereof and as to the
22 rights of the lessor and lessee thereof as shall be deemed neces-
23 sary and advisable by the governmental body.


1 Any bonds issued hereunder and at any time outstanding
2 may at any time and from time to time be refunded by a coun-
3 ty or municipality by the issuance of its refunding bonds in
4 such amount as the governing body may deem necessary to
5 refund the principal of the bonds so to be refunded, together
6 with any unpaid interest thereon; to make any improvements
7 or alterations in the industrial project or commercial project;
8 and any premiums and commissions necessary to be paid in
9 connection therewith. Any such refunding may be effected
10 whether the bonds to be refunded shall have then matured or
11 shall thereafter mature, either by sale of the refunding bonds
12 and the application of the proceeds thereof for the redemption
13 of the bonds to be refunded thereby, or by exchange of the re-
14 funding bonds for the bonds to be refunded thereby: Provided,
15 That the holders of any bonds so to be refunded shall not be
16 compelled without their consent to surrender their bonds for
17 payment or exchange prior to the date on which they are pay-
18 able or, if they are called for redemption, prior to the date on
19 which they are by their terms subject to redemption. Any re-
20 funding bonds issued under the authority of this article shall be
21 payable from the revenues out of which the bonds to be re-
22 funded thereby were payable, and shall be subject to the pro-
23 visions contained in section seven of this article and shall be
24 secured in accordance with the provisions of section eight of this
25 article.

§13-2C-12. Use of proceeds from sale of bonds.

1 The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the purpose
3 for which the bonds were issued: Provided, That any accrued
4 interest and premium received in any such sale shall be
5 applied to the payment of the principal of or the interest on
6 the bonds sold: Provided, however, That if for any reason
7 any portion of such proceeds shall not be needed for the
8 purpose for which the bonds were issued, then such unneeded
9 portion of said proceeds shall be applied to the payment
of the principal of or the interest on said bonds, or held
in reserve for the payment thereof. The cost of acquiring
any industrial project or commercial project shall be deemed to
include the following: The cost of acquiring any real estate
deemed necessary, the actual cost of the construction of any
part of an industrial project or commercial project which may
be constructed, including architects', engineers', financial or
other consultants' and legal fees, the purchase price of any part
of a project that may be acquired by purchase, all expense in-
curred in connection with the authorization, sale and issuance of
the bonds to finance such acquisition, and the interest on such
bonds for a reasonable time prior to construction, during con-
struction, and for not exceeding twelve months after completion
of construction and any other cost and expense reasonably
necessary in the establishment and acquisition of such industrial
project or commercial project and the financing thereof.

§13-2C-13. No contribution by county or municipality.

No county court or municipality shall have the power to
pay out of its general funds, or otherwise contribute, any
of the costs of acquiring or constructing an industrial project or
commercial project, to be financed out the proceeds from the
sale of revenue bonds issued under the authority of this article:

 Provided, That this provision shall not be construed to prevent
a county or municipality from accepting donations of property
to be used as a part of an industrial project or commercial proj-
et or to be used for defraying any part of the cost of any such
project. The bonds issued pursuant to this article shall be pay-
able solely from the revenue derived from the industrial project
or commercial project and shall not constitute an indebtedness
of the county or of the municipality within the meaning of any
constitutional provision and it shall be plainly stated on the face
of each bond that it has been issued under the provisions of this
article and that it does not constitute an indebtedness of the
county or municipality within the meaning of the constitution of
West Virginia.

No county court or municipality shall have the authority
under this article to levy any taxes for the purpose of paying
any part of the cost of acquiring an industrial project or com-
mmercial project. However, all necessary preliminary expenses
23 actually incurred by a county court or a municipality in the
24 making of surveys, taking options, preliminary planning, and all
25 other expenses necessary to be paid prior to the issuance, sale
26 and delivery of the revenue bonds, may be paid by such govern-
27 mental body out of any surplus contained in any item of
28 budgetary appropriation or any revenues collected in excess of
29 anticipated revenues, which shall be reimbursed and repaid out
30 of the proceeds of the sale of the revenue bonds.


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


1 No member of a county court or the governing body of a
2 municipality issuing revenue bonds under the provisions of
3 this article shall have any financial interest, directly or
4 indirectly, in the leasing of an industrial project or commercial
5 project acquired or constructed pursuant to this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[\underline{D. Daniel Clarke}\

Chairman Senate Committee

\[\underline{Clarence C. Chester Jr.}\

Chairman House Committee

Originated in the House.
Takes effect from passage.

\[\underline{Howard W. Cannon}\

Clerk of the Senate

\[\underline{C. A. Blowership}\

Clerk of the House of Delegates

\[\underline{H. P. Bottomley}\

President of the Senate

\[\underline{Lewis H. Meade}\

Speaker House of Delegates

The within [applied] this the 26th day of [March], 1974.

\[\underline{Arch A. Perdue Jr.}\

Governor
PRESENTED TO THE
GOVERNOR

Date  3/21/74
Time   10:30 a.m.