WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

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ENROLLED

HOUSE BILL No. 1392

(By Mr. Monts and Mr. Binsmore)

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PASSED March 5, 1975

In Effect ___ Passage

C 641
AN ACT to amend and reenact sections four, five, six, seven, eight, nine, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the industrial development and commercial development bond 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 agreement for the lease, sale or financing of an industrial project or commercial
project and the contents of any such agreement; relating to the use of proceeds from the sale of all revenue bonds issued under said 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 sections four, five, six, seven, eight, nine, twelve, thirteen, fifteen and twenty, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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


1 In addition to any other powers which a county or municipality may now have, each county, by and through its county commission, 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, gift, lease or otherwise, one or more industrial projects or commercial projects, or additions thereto, which shall be located within this state; (2) to lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any or all of its industrial projects or commercial projects for such rentals or amounts and upon such terms and conditions as the governing body may deem advisable; (3) to finance one or more industrial projects or commercial projects by making secured or unsecured loans to others to provide funds for the acquisition, by purchase, construction, lease or otherwise, or any such project or projects; (4) to issue revenue bonds for the purpose of defraying the cost of acquisition, by construction, purchase, lease or otherwise, by the county, municipality or others, of 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 (5) to issue and deliver revenue
bonds in exchange for an industrial project or commercial
project.

§13-2C-5. Location of industrial projects or commercial projects.

Any industrial project or commercial project acquired by
construction and purchase, or by either, or financed by a
county, shall be located within the county issuing such revenue
bonds and any industrial project or commercial project acquired
by construction and purchase, or by either, or financed by a
municipality, 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 coun-
ties, 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 or financed 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.

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

Any two or more governmental bodies may jointly acquire
by construction and purchase, or by either, or finance 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 commission 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 or financing of an in-
dustrial project or commercial project. The respective govern-
ning bodies, acting jointly, may provide by agreement among
themselves, the terms and conditions of such joint participation.

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

All bonds issued by a county commission or by a munici-
pality under the authority of this article shall be limited obliga-
tions of the county, or of the municipality. The principal and
interest on such bonds shall be payable out of the revenues derived from the lease, sale, financing or other disposition of the industrial project or commercial project for which the bonds are issued, or any other revenue derived from such industrial project or commercial 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 industrial 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 commission shall be signed by the president and attested by the clerk of the county commission under the seal of the commission 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 commission 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 signa-
tures 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, or if additional real or personal property
is to be added to the industrial project or commercial project,
additional bonds may in like manner be issued to provide the
amount of the deficiency, or to defray the cost of acquiring
or financing such additional real or personal property, 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 pre-
ference 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 commer-
cial project which was acquired, purchased, constructed, or
built or improved, or financed 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 and interest on any bonds issued under the
authority of this article shall be secured by a pledge of the in-
come and revenues derived from the lease, sale, financing or
other disposition of the industrial project or commercial 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 com-
mision or municipality, such revenue bonds may also be
secured by a trust indenture by and between the county com-
mision or the municipality and a corporate trustee, which may
be a trust company or bank having trust powers, within or with-
out 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 con-
tain 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 commission or the municipality in rela-
tion to the construction, acquisition or financing of an in-
dustrial 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 appli-
cation 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 entity which leases, purchases or
will own the project or either thereof, who may require the
security given by any contractor or any depository of the pro-
ceeds of the bonds or the revenues received from the lease, sale,
financing or other disposition of the industrial project or com-
mercial project be satisfactory to such purchasers, their succes-
sors, assigns or nominees, or be satisfactory to the entity which
leases, purchases or will own the industrial project or commer-
cial project. Such indenture may set forth the rights and
remedies of the bondholders, the county or municipality or such
trustee and said indenture may provide for accelerating the
maturity of the revenue bonds, at the option of the bond-
holders or the governmental body issuing the same, upon de-
fault in the payment of rentals, or amounts due from the
entity which leases, purchases, or will own the project or for
other cause. The governing body may also provide by resolu-
tion 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 and investment thereof and for the
method of distribution thereof, with such safeguards and restric-
tions 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 commission of the county in which an in-
dustrial project or commercial project is located, the same shall
have the same effect, as to notice, as the recordation 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 assign-
ment of the lease on or sale or financing agreement with
respect to said industrial project or commercial project and by
assignment or pledge of the income received by virtue of said
lease, sale or financing agreement. 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 inden-
ture 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 in-
struments securing bonds, including, without limiting the gen-
erality of the foregoing, provisions respecting the fixing and
collection of rental, purchase or other payments for any indus-
trial project or commercial project covered by such pro-
ceedings or mortgage, the terms to be incorporated in the lease,
sale or financing agreement with respect to such industrial
project or commercial project, the improvement, repair, main-
tenance and insurance of such industrial project or commer-
cial project, the creation and maintenance of special funds from
the revenues received from the lease, sale or financing 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, in-
denture, mortgage, or deed of trust, all as the governing body
shall deem advisable and as shall not be in conflict with the
provisions of this article or any existing law: Provided, That
in making any such agreements or provisions a county or
municipality shall not have the power to obligate itself by
indenture, ordinance, resolution, mortgage or deed of trust,
except with respect to the industrial project or commercial
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
indenture, 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 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 or other amounts and to apply the
revenues from the industrial project 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 viola-
tion 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 outcry 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, sale or financing of an in-
dustrial project or commercial project.

Prior to the issuance of any bonds, the county commission
or the municipality shall enter into an agreement to lease, sell
or finance the industrial project or commercial project to a
lessee, purchaser or owner which agreement provides for pay-
ment to the county commission or municipality or designated
depository of such rentals or amounts as will be sufficient (a)
to pay the principal of and interest on the bonds issued to
finance the project as such principal and interest respectively
mature, (b) to build up and maintain any reserves deemed by
the governing body to be advisable in connection therewith, and
(c) unless the agreement obligates the lessee, purchaser or own-
er to pay for the cost of maintaining, repairing and insuring of
the project, to pay the costs of maintaining the project in good
repair and keeping it properly insured. The said agreement shall
contain a provision for the revision thereof 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, purchaser or owner. The said agreement
shall also contain such other provisions relating to the industrial
project or commercial project and the operation, maintenance
and improvement thereof and as to the rights of the parties to
said agreement as shall be deemed necessary and advisable
by the governmental body.

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

1 The proceeds from the sale of any bonds issued under
authority of this article shall be applied only for the purpose
for which the bonds were issued: Provided, That any accrued
interest and premium received in any such sale shall be
applied to the payment of the principal of or the interest on
the bonds sold: Provided, however, That if for any reason
any portion of such proceeds shall not be needed for the
purpose for which the bonds were issued, then such unneeded
portion of said proceeds shall be applied to the purchase
of bonds for cancellation or 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 com-
mercial 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 archi-
tects', engineers', financial or other consultants' and legal fees,
the purchase price or rental of any part of a project that may be
acquired by purchase or lease, all expense incurred in connec-
tion 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 construction, and
for not exceeding twelve months after completion of con-
struction and any other costs 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.

1 No county commission or municipality shall have the
power to pay out of its general funds, or otherwise con-
tribute, any of the costs of acquiring, constructing or financing
an industrial project or commercial project, to be acquired, con-
Pro-\nvided, 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 project or to be used for defraying any part of the cost of any such project. The bonds issued pursuant to this article shall be payable solely from the revenue derived from the industrial project or commercial project or the financing thereof 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 commission 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, constructing or financing an industrial project or commercial project. However, all necessary preliminary expenses actually incurred by a county commission or a municipality in the making of surveys, taking options, preliminary planning, and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by such governmental body out of any surplus contained in any item of budgetary appropriation or any revenues collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.


The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a county commission or a municipality may acquire to be leased, sold or otherwise disposed of according to the provisions of this article, shall be exempt from taxation by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned by such county or municipality.

1 No member of a county commission or the governing body
2 of a municipality issuing revenue bonds under the provisions
3 of this article shall have any financial interest, directly or
4 indirectly, in the leasing, sale or other disposition of an in-
5 dustrial project or commercial project acquired, constructed or
6 financed pursuant to this article.
Enr. H. B. 1392]

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

Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ______ approved ______ this the 25th day of _________, 1975.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/20/75
Time 4:30 P.M.