

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977



ENROLLED

Committee Substitute for

HOUSE BILL No. 1206

(By Mr. *Potts & Mr. Swann*)



PASSED *April 8,* 1977

In Effect *ninety days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1206

(MR. TEETS and MR. SWANN)

[Passed April 8, 1977; in effect ninety days from passage.]

AN ACT to amend and reenact article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state sinking fund commission; continuing the commission and designating it the West Virginia municipal bond commission; providing for changes in the composition of the commission, relating to terms of appointment, vacancies, and removal from office; providing appointment of chief administrative officer; relating to meetings; defining a quorum; providing compensation and expenses for members of commission; providing for legal representation; establishing an executive committee and providing powers and duties of executive committee; requiring bonds of officers and employees of commission; establishing powers and duties of commission; authorizing securities for investment; relating to limitations and prohibitions on purchase, sale or exchange of securities; providing for the proration of interest amount; various accounts; relating to the custody of securities; providing for the notification by issuer of bond sale; relating to the collection, deposit and accounting of funds; creating the municipal bond commission fund; relating to accounts to be kept by commission issuing annual statements and return of canceled bonds and coupons; providing for issuance of levy statements; providing methods for the destruction of canceled coupons and

bonds; relating to appointment of substitute paying agents; authorizing the transfer and investment of funds; and providing for annual reports.

Be it enacted by the Legislature of West Virginia:

That article three, 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 3. MUNICIPAL BOND COMMISSION.

§13-3-1. Commission continued.

1 The state sinking fund commission is hereby continued in
2 all respects as heretofore constituted under prior provisions
3 of this article, but is hereby designated as the West Virginia
4 municipal bond commission.

§13-3-2. Composition of commission; terms of appointment; vacancies; removal from office.

1 (a) The commission shall be composed of five members as
2 follows: (1) The auditor of the state, by virtue of his office;
3 (2) the treasurer of the state, by virtue of his office; (3) the
4 state tax commissioner, by virtue of his office; and (4) two
5 residents of the state appointed by the governor by and with
6 the advice and consent of the Senate. Of the two appointed
7 members, one shall be, or shall have been, the mayor of a
8 municipality, and one shall be, or shall have been, a member
9 of a county commission: *Provided*, That if such mayor or
10 member of a county commission is not presently serving in
11 such position, he shall have served in such position within the
12 six years preceeding the term for which such member is to be
13 appointed. No more than one of the members appointed by
14 the governor may belong to the same political party.

15 (b) The appointed members of the commission shall serve
16 overlapping terms of four years each and until their respec-
17 tive successors have been appointed and qualified, except for
18 the original appointments, one member shall be appointed for
19 a term of four years and until his successor has been appointed
20 and qualified, one member shall be appointed for two years
21 and until his successor has been appointed and qualified. Each

22 member shall take and subscribe to the oath required by sec-
23 tion five, article four of the constitution of this state.

24 (c) Vacancies shall be filled by appointment by the governor
25 for the unexpired term of the member whose office is vacant
26 and such appointment shall be made within sixty days of the
27 occurrence of such vacancy.

28 (d) No member of the board appointed by the governor
29 may be removed from office except for official misconduct,
30 incompetency, neglect of duty or gross immorality.

**§13-3-3. Officers; chief administrative officer; meetings; quorums;
compensation and expenses; legal representation.**

1 (a) The state tax commissioner shall be chairman of the
2 commission and the state treasurer shall be treasurer of the
3 commission.

4 (b) The members of the commission shall appoint a chief
5 administrative officer and may fix his title, duties and com-
6 pensation. The commissioner is authorized to employ such
7 other employees as may be necessary and such consultants
8 as the commission deems advisable and fix their compensa-
9 tion and prescribe their duties.

10 (c) Appointed members of the commission shall be paid
11 fifty dollars for each day or substantial portion thereof that
12 they are engaged in the work of the commission. Each mem-
13 ber of the commission may be reimbursed for all reasonable
14 and necessary expenses actually incurred in the performance
15 of duties on behalf of the commission.

16 (d) The commission shall hold at least three meetings in
17 each fiscal year, one of which meetings shall be held in
18 July and shall be the annual meeting. Such meetings shall
19 be held on such dates and at such places as the chairman may
20 prescribe. Additional meetings may be held at the call of
21 the chairman or upon the written request of three members at
22 such time and place as designated in such call or request.
23 Four members of the commission constitute a quorum.

24 (e) The attorney general shall be the legal advisor to the
25 commission.

§13-3-4. Executive committee; powers and duties.

1 (a) The state tax commissioner, the state treasurer, and
2 the state auditor constitute the executive committee of the
3 municipal bond commission. The executive committee is
4 vested with all the powers of the commission when it is not
5 in session, except that the executive committee may not
6 overrule, reverse or disregard any action of the full com-
7 mission. Action of the executive committee shall be taken
8 by resolution adopted by a majority of the executive com-
9 mittee. The chairman may call meetings of the executive
10 committee at any time.

§13-3-5. Officer and employee bonds.

1 The state treasurer shall give a separate and additional
2 bond for the faithful performance of his duties as custodian
3 of the moneys, securities and other investments of the com-
4 mission in such amount as shall, from time to time, be fixed
5 by the commission. The chief administrative officer and the
6 employees designated by the commission shall furnish bonds
7 in such form and in such amounts, as the commission shall,
8 from time to time, determine. The costs of such bonds shall
9 be paid by the commission and such bonds shall be filed in
10 the same office as are the bonds of state officers. The
11 attorney general's approval of all bonds required by this sec-
12 tion shall be obtained.

§13-3-6. Powers and duties of commission.

1 The commission is hereby granted, has and may exercise
2 all powers necessary or appropriate to effectuate the purposes
3 of this article.

**§13-3-7. Permissible investments; limitations and prohibitions on
purchase, sale or exchange of securities; public records;
combining funds and proration of interest; custody of
securities.**

1 (a) Notwithstanding any provisions of this code to the con-
2 trary, the commission may invest funds under its control in
3 the following classes of securities and not otherwise:

4 (1) Securities of the United States or agency thereof which

5 are guaranteed by or for which the full faith and credit of the
6 United States is pledged for the payment of the principal and
7 interest;

8 (2) General obligations of the state or any of its agencies,
9 boards or commissions; and

10 (3) General obligations of any county, municipality or school
11 district in this state.

12 (b) Securities purchased or held under the provisions of this
13 article may be sold or exchanged for other securities: *Provided*,
14 That (1) no security shall be purchased, sold or exchanged
15 without the concurrence or ratification of a majority of all
16 members of the board; (2) no security shall be purchased at
17 a price above, nor sold or exchanged at a price below its
18 prevailing fair market value, (3) no security shall be pur-
19 chased, sold or exchanged for the purpose of aiding any indi-
20 vidual, firm or corporation by the payment of brokerage com-
21 missions or fees thereto, (4) no security purchased, sold or
22 exchanged shall benefit any member or employee of the com-
23 mission, and (5) no security shall be received in exchange
24 which does not comply with the requirements of this article.

25 (c) The commission shall record all pertinent information
26 related to any purchase, sale or exchange of securities and
27 make such information available for public inspection during
28 normal office hours of the commission.

29 (d) Funds from several or all accounts may be combined
30 for investment and any interest earned shall be prorated and
31 credited to the various contributing accounts on the basis of
32 amount thereof invested, calculated according to an average
33 periodic balance or other generally accepted accounting prin-
34 cipal: *Provided*, That such proration shall be calculated at least
35 once a year or upon specific request made to the commission.

36 (e) All securities purchased by the commission as an in-
37 vestment for the funds shall remain in the custody of the state
38 treasurer until the same are sold, exchanged, retired or ma-
39 ture and are paid.

§13-3-8. Notification by issuer of bond sale.

1 Prior to the issuance of any general obligation bond
2 or refunding bond by the state of West Virginia acting
3 through its departments, commissions, boards or agencies or by
4 any county, municipality or school district, the issuer shall
5 notify the commission of any proposed bond sale. Within
6 thirty days after issuance of bonds, the commission shall be
7 notified of the terms of the sale and provided with a copy of
8 the bond ordinance or resolution.

§13-3-9. Collection, deposit and accounting of funds.

1 All interest and other funds on hand July first of each
2 year and belonging to the counties, municipalities or school
3 districts for the purpose of amortizing bonded indebtedness,
4 shall be, by the treasurer or collector thereof, not later
5 than the following September, forwarded to the commission to
6 be deposited in the state treasury to the credit of the state.

7 Whenever the amount deposited for any issuer is not
8 sufficient to meet the interest or principal due, it shall be
9 the duty of the treasurer or collector of such issuer, upon
10 being notified of the fact by the commission, to remit a
11 sufficient amount of interest or principal that may be in his
12 possession to meet the interest or principal due.

13 Any taxes to provide for the payment of principal, crea-
14 tion of a reserve or sinking fund, or for the payment of
15 interest on bonds by any county, municipality or school
16 district which shall be collected by any state officer, shall
17 be paid by such officer to the commission, to be at once
18 applied to the payment of the debt of the county, municipality
19 or school district and the fact of such application of such
20 fund shall be reported by the auditor to the treasurer or
21 collector of such issuer, which report shall be a receipt for
22 the amount therein named.

23 The state auditor and the state treasurer shall carry an
24 account to be known as the municipal bond commission fund.
25 All deposits shall be carried as a part of such fund.

26 The commission shall deposit all collections and receipts
27 with the treasurer daily.

§13-3-10. Accounts of bond issues; annual statements, canceled bonds and coupons.

1 The commission shall keep separate accounts for each
2 bond issue showing in detail all receipts and disbursements:
3 *Provided*, That accounts of one issuer for the same purpose
4 may be consolidated into one account. Within thirty days
5 after the end of the fiscal year, the commission shall submit
6 to each issuer a statement of all receipts and disbursements
7 of the preceding fiscal year. At the same time, the commission
8 shall surrender to each issuer coupons and bonds which have
9 been paid and canceled or certificates of destruction as
10 provided for in section twelve of this article.

§13-3-11. Statement by commission to political subdivision showing levy required.

1 The commission shall, annually, at least thirty days before
2 the time for making up the estimate for levy purposes, render
3 to each political subdivision having outstanding general ob-
4 ligation bonds, a statement showing the levy required to pay
5 the interest on and provide for the retirement of the sub-
6 division's outstanding general obligation bonds.

§13-3-12. Destruction of canceled bonds and coupons.

1 Any canceled bonds and interest coupons of any issue
2 for which the commission acts as fiscal agent or paying
3 agent may be destroyed in the discretion of the commission
4 by one of the two methods described herein below.

5 Method I—The commission shall maintain a permanent
6 record for the purpose of recording the destruction of bonds
7 and coupons, showing the following: (1) With respect to
8 bonds, the purpose of issuance, the date of issue, serial num-
9 bers (if any), denomination, maturity date, and total principal
10 amount; and (2) with respect to coupons, the purpose of
11 issue and date of the bonds to which the coupons appertain,
12 the maturity date of the coupons and, as to each maturity
13 date, the denomination, quantity, and total amount of coupons.

14 After recording the specified information, the commis-
15 sion shall have the canceled bonds and coupons destroyed
16 by either burning or shredding, in the presence of the chair-

17 man of the commission and any three commission mem-
18 bers, each of whom shall certify that he saw the canceled
19 bonds and coupons destroyed. Such certificates shall be
20 made a part of the permanent record. Canceled bonds or
21 coupons shall not be destroyed until after one year from the
22 date of payment.

23 Method II—The commission may contract with any bank
24 or trust company acting as paying agent or co-paying agent
25 for a bond issue for the destruction of bonds and interest
26 coupons which have been canceled by the paying agent. The
27 contract shall require that the paying agent give the com-
28 mission a written certificate containing the same information
29 required by Method I. The certificates shall be made part
30 of the permanent record book of the commission. Each
31 contract shall also require that the paying agent be respon-
32 sible for proper payment and disposition of all bonds and
33 coupons, and for any duplicate payments to unauthorized per-
34 sons and nonpayment to authorized persons occurring as a
35 result of destruction of bonds or coupons under this section.
36 In addition, the commission may require the paying agent
37 to submit an indemnity bond, in an amount to be determined
38 by the commission, to assure performance of the duties
39 specified in this section. Canceled bonds or coupons may not
40 be destroyed until one year from the date of payment.

§13-3-13. Substitute paying agents.

1 The commission may appoint a new paying agent on any
2 issue for which the commission acts as fiscal agent, in the
3 event of the insolvency, threat of insolvency, malfeasance,
4 misfeasance, incompetence, or discontinuance from business
5 of the paying agent or in the case of discontinuance of the
6 place of payment as designated by the terms of such bonds.
7 Upon appointment of a substitute paying agent, the com-
8 mission shall publish notice of such action as a Class II
9 legal advertisement in compliance with the provisions of
10 article three, chapter fifty-nine of this code, and the publica-
11 tion area for such publication shall be the county in which
12 the former paying agent had residence. Upon designation
13 of another place of payment, publication of notice shall be

14 made in the county in which was located the former place of
15 payment.

§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.

1 Any funds of a political subdivision or of any of the agen-
2 cies, boards, commission or departments of the state of West
3 Virginia raised by levy, sale of bonds or otherwise and which
4 cannot be used within a reasonable time may be transferred to
5 the municipal bond commission. Any funds so transferred
6 shall be invested by the commission in accordance with the
7 provisions of this article. Any such funds so transferred may
8 be withdrawn by the public body which transferred the same
9 as authorized by this article upon one hundred twenty days'
10 notice in writing to the commission.

§13-3-15. Reports of commission.

1 The commission shall prepare a complete and full report of
2 its operations and investments at the close of each fiscal year
3 and furnish a copy thereof to the governor, president of the
4 Senate, speaker of the House of Delegates and the legislative
5 auditor on or before the first day of the next regular session
6 of the Legislature. Copies of the report shall be available upon
7 request for a reasonable fee to any citizen of the state:
8 *Provided*, That such report shall be available for public in-
9 spection during regular office hours of the commission.

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

James L. Davis
Chairman Senate Committee

Clarence L. Chestnut Jr
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. C. Dillon, Jr.
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

H. P. Borchers Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 24
day of April 1977.

John R. Rhyker
Governor

RECEIVED

APR 13 4 49 PM '77

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 24, 1977

Time 4:00 p.m.

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OFFICE
SECY. OF STATE