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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

## ENROLLED

SENATE BILL NO. 618  
(Originating in the Committee  
on Finance)

PASSED March 9, 1991  
In Effect from Passage

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AN ACT to amend and reenact sections three, five, six, seven, eight, nine, eleven, thirteen and fourteen, article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections five-a and seven-a, all relating to the municipal bond commission; exempting the executive secretary of the municipal bond commission from the list of officers whose salaries are set by statute; providing for meetings and voting quorums; authorizing the commission to charge fees for services rendered; changing the powers and duties of the commission; expanding the list of permissible investments; requiring quarterly proration of interest income; permitting escrowing advanced payments of bond principal and interest; requiring notification by issuers of bond sales; providing for collection, deposit and accounting of funds; providing for the determination of levy amount; permitting withdrawal of excess funds; requiring commission to annually estimate the amount of levy necessary for an issuer to make required debt service payments, prescribing rules for making such estimates; expanding grounds for appointment of substitute paying agents; and requiring sixty days notice for withdrawal of funds.

*Be it enacted by the Legislature of West Virginia:*

That sections three, five, six, seven, eight, nine, eleven, thirteen and fourteen, article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections five-a and seven-a, all to read as follows:

**ARTICLE 3. MUNICIPAL BOND COMMISSION.**

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

1 (a) The secretary of the department of tax and  
2 revenue or his or her designee shall be chair of the  
3 commission.

4 (b) The members of the commission shall appoint a  
5 chief administrative officer and may fix his title and  
6 duties. Notwithstanding the provisions of section two-  
7 a, article seven, chapter six of this code, the commis-  
8 sion shall have the authority to set the compensation  
9 of the chief administrative officer. The chief adminis-  
10 trative officer shall serve as secretary to the board and  
11 treasurer of the commission. The chair may designate  
12 a board member to serve as secretary in the absence  
13 of the chief administrative officer. The chair is  
14 authorized, with the approval of the commission, to  
15 employ such other employees as may be necessary and  
16 such consultants as the commission deems advisable  
17 and fix their compensation and prescribe their duties.

18 (c) Appointed members of the commission shall be  
19 paid fifty dollars for each day or substantial portion  
20 thereof that they are engaged in the work of the  
21 commission. Each member of the commission may be  
22 reimbursed for all reasonable and necessary expenses  
23 actually incurred in the performance of duties on  
24 behalf of the commission.

25 (d) The commission shall hold at least three meet-  
26 ings in each fiscal year, one of which meetings shall be  
27 held within sixty days of the end of the fiscal year and

28 shall be the annual meeting. Such meetings shall be  
29 held on such dates and at such places as the chair may  
30 prescribe. Additional meetings may be held at the call  
31 of the chair or upon the written request of three  
32 members at such time and place as designated in such  
33 call or request. Three members of the commission  
34 constitute a quorum.

35 (e) The attorney general shall be the legal advisor to  
36 the commission.

**§13-3-5. Officer and employee bonds.**

1 The chief administrative officer and the employees  
2 designated by the commission shall furnish bonds in  
3 such form and in such amounts, as the commission  
4 shall, from time to time, determine. The costs of such  
5 bonds shall be paid by the commission and such bonds  
6 shall be filed in the same office as are the bonds of  
7 state officers. The attorney general's approval of all  
8 bonds required by this section shall be obtained.

**§13-3-5a. Costs and expenses; fees for services.**

1 The commission shall set a schedule of fees to be  
2 charged for the commission's services, sufficient to  
3 meet all expenses of the commission. These fees shall  
4 be assessed on the basis of debt service paid by the  
5 commission for each issuer and shall not exceed one-  
6 half of one percent of the debt service paid, but in no  
7 case shall the fee exceed two thousand dollars per  
8 issue or series per annum. The commission may assess  
9 additional fees, sufficient to recover the expenses of  
10 special projects undertaken to benefit the users of the  
11 commission's services, against specific issuers who are  
12 the beneficiaries of such projects.

13 All sums collected by the commission for its services  
14 shall be deposited in a separate account at the state  
15 treasury to the credit of the municipal bond commis-  
16 sion, and no expenditures for purposes of this article  
17 are authorized from collections except in accordance  
18 with appropriations by the legislature and in accor-  
19 dance with the provisions of article three, chapter  
20 twelve of this code and upon fulfillment of the

21 provisions set forth in article two, chapter five-a of  
22 this code. Any amounts collected which are found  
23 from time to time to exceed the funds needed for  
24 purposes set forth in this article may be transferred to  
25 other accounts or funds and redesignated for other  
26 purposes as appropriated by the legislature. No  
27 expenses incurred under this article shall be a charge  
28 against the general funds of this State.

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

1 (a) The commission shall serve as fiscal agent for all  
2 issuers of general obligation bonds issued by the  
3 counties, municipalities, and school districts of the  
4 state of West Virginia when the commission is specif-  
5 ically named as the fiscal agent by statute.

6 (b) The commission shall serve as fiscal agent for all  
7 issuers of revenue bonds issued by the counties,  
8 municipalities, and school districts of this state when  
9 the commission is specifically named as the fiscal  
10 agent by statute.

11 (c) The commission shall serve as fiscal agent for the  
12 issuers of revenue bonds issued by the state of West  
13 Virginia through its departments, commissions,  
14 boards, or agencies, when the commission is specifi-  
15 cally named as the fiscal agent by statute.

16 (d) The commission may serve as fiscal agent for the  
17 issuer of other public purpose revenue bond issues  
18 when so provided by bond ordinance.

19 (e) The commission may agree to serve as paying  
20 agent for all issuers when so provided by bond  
21 ordinance.

22 (f) The commission may conduct business by tele-  
23 phonic conference when necessary.

24 (g) The Commission is hereby granted, has and may  
25 exercise all powers necessary or appropriate to effec-  
26 tuate the purposes 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  
2 the contrary, the commission may invest funds under  
3 its control in the following classes of securities and not  
4 otherwise:

5 (1) Securities of the United States or any agency  
6 thereof which are guaranteed by or for which the full  
7 faith and credit of the United States is pledged for the  
8 payment of the principal and interest;

9 (2) General obligations of this state or any of its  
10 agencies, boards or commissions;

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

13 (4) Pools of investment operated by the West Vir-  
14 ginia board of investments provided that their invest-  
15 ments are limited to the above named securities, and  
16 provided that securities purchased for these pools  
17 following the date of the enactment of this act shall  
18 not have maturities greater than five years in length;  
19 and

20 (5) Repurchase agreements or similar banking  
21 arrangements with a member bank of banks of the  
22 federal reserve system or a bank, the deposits of which  
23 are insured by the federal deposit insurance corpora-  
24 tion, or its successor: *Provided*, That such investments  
25 shall only be made to the extent insured by the federal  
26 deposit insurance corporation or to the extent that the  
27 principal amount thereof shall be fully collateralized  
28 by direct obligations of or obligations guaranteed by  
29 the United States of America.

30 (b) Securities purchased or held under the provi-  
31 sions of this article may be sold or exchanged for other  
32 securities: *Provided*, That: (1) No security shall be  
33 purchased, sold or exchanged without the concurrence  
34 or ratification of a majority of all members of the  
35 commission; (2) no security shall be purchased at a

36 price above, nor sold or exchanged at a price below its  
37 prevailing fair market value; (3) no security shall be  
38 purchased, sold or exchanged for the purpose of aiding  
39 any individual, firm or corporation by the payment of  
40 brokerage commissions or fees thereto; (4) no security  
41 purchased, sold or exchanged shall benefit any mem-  
42 ber or employee of the commission; and (5) no security  
43 shall be received in exchange which does not comply  
44 with the requirements of this article.

45 (c) The commission shall record all pertinent infor-  
46 mation related to any purchase, sale or exchange of  
47 securities and make such information available for  
48 public inspection during normal office hours of the  
49 commission.

50 (d) Funds from several or all accounts may be  
51 combined for investment and any interest earned shall  
52 be prorated and credited quarterly to the various  
53 contributing accounts on the basis of amount thereof  
54 invested, calculated according to an average periodic  
55 balance or other generally accepted accounting  
56 principle.

57 (e) All securities purchased by the commission as an  
58 investment for the funds shall remain in the custody  
59 of the state board of investments until the same are  
60 sold, exchanged, retired or mature and are paid.

**§13-3-7a. Escrowing bond issues.**

1 (a) All bond issues for which the commission is  
2 serving as fiscal agent shall be considered to have been  
3 canceled and paid in advance of their due date or date  
4 of redemption if there shall have been deposited with  
5 the commissioner either:

6 (1) Moneys, sufficient to pay when and as due all  
7 amounts of principal and interest payable on such  
8 bonds; or

9 (2) Securities of a quality in which the commission  
10 is authorized by law to invest moneys under its  
11 control, the principal of and interest on which will  
12 provide moneys sufficient to pay when and as due all  
13 amounts of principal and interest payable on such

14 bonds.

15 (b) The moneys and securities held by the commis-  
16 sion pursuant to this section shall be held by the  
17 commission in trust and irrevocably dedicated solely to  
18 the payment of principal or redemption price, if  
19 applicable, of and interest on the bonds: *Provided*,  
20 That this action shall be taken solely at the direction  
21 of the issuer. Following such irrevocable commitment  
22 of moneys and securities in trust, funds on account  
23 with the commission for said bonds which are surplus  
24 may be immediately returned to the issuer as specified  
25 by statute for paid out surpluses.

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

1 For any issue for which the commission shall serve  
2 as fiscal agent, either by statute or provisions of bond  
3 ordinance, or for any issue which refunds an issue for  
4 which the commission is currently serving as fiscal  
5 agent, the issuer shall notify the commission of the  
6 issuance of such bonds not more than five days after  
7 closing, and provide the commission with a copy of the  
8 official statement and bond ordinance or resolution not  
9 more than forty-five days following closing.

**§13-3-9. Collection, deposit and accounting funds; insuffi-  
cient deposit; withdrawal of additional funds.**

1 (a) *Deposit of funds.* — All tax receipts and interest  
2 belonging to the counties, municipalities or school  
3 districts and earmarked for the purpose of amortizing  
4 bonded indebtedness, shall be, by the treasurer or  
5 collector thereof, forwarded to the commission at least  
6 quarterly to be deposited in the state treasury to the  
7 credit of the municipal bond commission: *Provided*,  
8 That all funds from the prior fiscal year shall be  
9 forwarded to the commission not later than the  
10 following thirtieth day of September.

11 (b) *Insufficient deposit.* — Whenever the amount  
12 deposited for any issuer is not sufficient to meet the  
13 interest or principal due, it shall be the duty of the  
14 treasurer or collector of such issuer, upon being  
15 notified of that fact by the commission, to immediately



16 remit all funds in his possession that have been  
17 earmarked by the issuer for the purpose of amortizing  
18 bonded indebtedness plus such additional funds as are  
19 necessary to meet the interest or principal due.

20 (c) *Withdrawal of additional funds.* — If an issuer  
21 has remitted to the commission funds not earmarked  
22 for the purpose of amortizing bonded indebtedness, all  
23 or a portion of such funds may be withdrawn by the  
24 issuer upon sixty days written notice to the commis-  
25 sion: *Provided*, That such withdrawal shall neither  
26 create a deficit in the issuer's account with the  
27 commission nor be in conflict with terms of the bond  
28 issue.

29 (d) *Payment of taxes.* — Any taxes to provide for the  
30 payment of principal, creation of a reserve or sinking  
31 fund, or for the payment of interest on bonds by any  
32 county, municipality or school district which shall be  
33 collected by any state officer, shall be paid by such  
34 officer to the commission to be at once applied to the  
35 payment of the debt of the county, municipality or  
36 school district and the fact of such application of such  
37 fund shall be reported by the auditor to the treasurer  
38 or collector of such issuer, which report shall be a  
39 receipt for the amount therein named.

40 (e) *Municipal bond commission fund.* — The state  
41 auditor and the state treasurer shall carry an account  
42 to be known as the municipal bond commission fund.  
43 All deposits shall be carried as a part of such fund.

44 (f) *Deposit of collections.* — The commission shall  
45 deposit all collections and receipts with the treasurer  
46 daily.

**§13-3-11. Statement by commission to political subdivision  
showing levy required; determination of  
levy.**

1 The commission shall, annually, at least thirty days  
2 before the time for making up the estimate for levy  
3 purposes, render to each political subdivision having  
4 outstanding general obligation bonds, a statement  
5 showing the levy required to pay the interest on and

6 provide for the retirement of the subdivision's out-  
7 standing general obligation bonds.

8 In determining the levy required, the commission  
9 shall be governed by the terms of section thirty-four,  
10 or section thirty-five, article one of this chapter:  
11 *Provided*, That the commission may augment the levy  
12 by a reasonable amount to provide for delinquencies  
13 and exonerations; and the commissioner may include  
14 in the estimate, the principal and interest due on bond  
15 issues in July, August and September of the following  
16 fiscal year. For the purposes of this section, the  
17 amount of any moneys, not earmarked for amortizing  
18 bonded indebtedness, but which was forwarded by the  
19 issuer to the commission for the purpose of meeting  
20 principal and interest due under section nine of this  
21 article, shall be considered a deficiency for a prior  
22 year.

**§13-3-13. Substitute paying agents.**

1 The commission may appoint a new paying agent on  
2 any issue for which the commission acts as fiscal  
3 agent, in the event of the insolvency, threat of insol-  
4 vency, malfeasance, misfeasance, incompetence, resig-  
5 nation, or discontinuance from business of the paying  
6 agent or in the case of discontinuance of the place of  
7 payment as designated by the terms of such bonds.  
8 Upon appointment of a substitute paying agent, the  
9 commission shall publish notice of such action as a  
10 Class II legal advertisement in compliance with the  
11 provisions of article three, chapter fifty-nine of this  
12 code, and the publication area for such publication  
13 shall be the county in which the former paying agent  
14 had residence. Upon designation of another place of  
15 payment, publication of notice shall be made in the  
16 county in which was located the former place of  
17 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  
2 agencies, boards, commission or departments of the  
3 state of West Virginia raised by levy, sale of bonds or

4 otherwise and which cannot be used within a reason-  
5 able time may be transferred to the municipal bond  
6 commission. Any funds so transferred shall be  
7 invested by the commission in accordance with the  
8 provisions of this article. Any such funds so trans-  
9 ferred may be withdrawn by the public body which  
10 transferred the same as authorized by this article upon  
11 sixty days' notice in writing to the commission.

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

*Homer Heck*  
.....  
Chairman Senate Committee

*Ernest C Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Samuel R. Bink*  
.....  
Clerk of the Senate

*Donald G. Kopp*  
.....  
Clerk of the House of Delegates

*Keith M. Little*  
.....  
President of the Senate

*Bob C. Cline*  
.....  
Speaker House of Delegates

The within *is approved* this the *1st* .....  
day of *April* ....., 1991.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:50am