

SB 243

FILED

2009 MAY -8 PM 3:41

**WEST VIRGINIA LEGISLATURE** OFFICE WEST VIRGINIA SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009**



**ENROLLED  
COMMITTEE SUBSTITUTE  
FOR**

**Senate Bill No. 243**

(SENATORS McCABE, CARUTH, PLYMALE  
AND PREZIOSO, *original sponsors*)

[Passed April 10, 2009; in effect ninety days from passage.]

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AN ACT to repeal §13-1-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §13-1-4, §13-1-14, §13-1-15, §13-1-15a, §13-1-16, §13-1-17, §13-1-19 and §13-1-21 of said code, all relating to updating the code for consistency with the current practices and procedures required for issuing general obligation bonds through competitive sale and the West Virginia Constitution; providing that the issuer is not required to designate the series of bonds in the election order; providing that the bond resolution does not have to set forth the date of issuance, the denominations of the bonds, the medium with which the bonds are payable or the terms of redemption; allowing issuers to establish a maximum rate of interest in the bond resolution; allowing issuers to make semiannual payments on principal and interest; lengthening the time an issuer is required to begin making debt service payments by

a year from the date of issuance; requiring issuers to register bonds and eliminating reference to coupon bonds; allowing issuers to accept electronic bids; and allowing an issuer to publish an abbreviated sale of notice when advertising the sale of bonds.

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

That §13-1-18 of the Code of West Virginia, 1931, as amended, be repealed; and that §13-1-4, §13-1-14, §13-1-15, §13-1-15a, §13-1-16, §13-1-17, §13-1-19 and §13-1-21 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.**

**§13-1-4. Bond issue proposal to be submitted to voters; election order.**

1 No debt shall be contracted or bonds issued under this  
2 article until all questions connected with the same are first  
3 submitted to a vote of the qualified electors of the political  
4 division for which the bonds are to be issued, and receive  
5 three fifths of all the votes cast for and against the same:  
6 *Provided*, That a county board of education may contract  
7 indebtedness and issue bonds for public school purposes  
8 when submitted to a vote of the people of the county if the  
9 question of contracting indebtedness and issuing bonds is  
10 approved by a majority of all the votes cast for and against  
11 the same pursuant to section ten, article X of the constitu-  
12 tion. The governing body of any political division referred  
13 to in this article may, and when requested so to do by a  
14 petition in writing, praying that bonds be issued and  
15 stating the purpose and amount thereof, signed by legal  
16 voters of the political division equal to twenty percent of  
17 the votes cast in a county for Governor, or in a municipal  
18 corporation or school district for mayor or member of the  
19 board of education, as the case may be, shall, by order  
20 entered of record, direct that an election be held for the  
21 purpose of submitting to the voters of the political division

22 all questions connected with the contracting of debt and  
23 the issuing of bonds. The order shall state:

24 (a) The necessity for issuing the bonds or, if a petition  
25 has been filed as provided herein, that the petition has  
26 been filed;

27 (b) If for the construction of a county-district road or  
28 bridge thereon, a summary of the engineer's report pro-  
29 vided for in the following section setting forth the approx-  
30 imate extent and the estimated cost of the proposed  
31 improvement and the kind or class of work to be done  
32 thereon;

33 (c) Purpose or purposes for which the proceeds of bonds  
34 are to be expended;

35 (d) Valuation of the taxable property as shown by the  
36 last assessment thereof for state and county purposes;

37 (e) Indebtedness, bonded or otherwise;

38 (f) Amount of the proposed bond issue;

39 (g) Maximum term of bonds;

40 (h) Maximum rate of interest;

41 (i) Date of election;

42 (j) That the levying body is authorized to lay a suffi-  
43 cient levy annually to provide funds for the payment of the  
44 interest upon the bonds and the principal at maturity and  
45 the approximate rate of levy necessary for this purpose;

46 (k) In the case of school bonds, that the bonds, together  
47 with all existing bonded indebtedness, will not exceed in  
48 the aggregate five percent of the value of the taxable  
49 property in the school district ascertained in accordance  
50 with section eight, article X of the constitution; and that  
51 the bonds will be payable from a direct annual tax levied

52 and collected in each year on all taxable property in the  
53 school district sufficient to pay the principal and the  
54 interest maturing on the bonds in that year, together with  
55 any deficiencies for prior years, within, and not exceeding  
56 thirty-four years, which tax levies will be laid separate  
57 and apart and in addition to the maximum rates provided  
58 for tax levies by school districts on the several classes of  
59 property in section one, article X of the constitution, but  
60 in the same proportions as the maximum rates are levied  
61 on the several classes of property; and the tax may be  
62 levied outside the limits fixed by section one, article X of  
63 the constitution.

64 Any other provision which does not violate any provi-  
65 sion of law, or transgress any principle of public policy,  
66 may be incorporated in the order.

**§13-1-14. Resolution authorizing issuance and fixing terms of  
bonds.**

1 If the required amount of all the votes, pursuant to  
2 section four of this article, cast for and against the propo-  
3 sition to incur debt and issue negotiable bonds is in favor  
4 of the same, the governing body of the political division  
5 shall, by resolution, authorize the issuance of the bonds in  
6 an amount not exceeding the amount stated in the propo-  
7 sition; establish the maximum rate or rates of interest  
8 which the bonds shall bear within the maximum rate  
9 stated in the proposition submitted to vote; require that  
10 the bonds shall be made payable at the office of the  
11 Municipal Bond Commission and at any other place or  
12 places as the body issuing the same designates; provide for  
13 a sufficient levy to pay the annual interest on the bonds  
14 and the principal at maturity; fix the times within the  
15 maximum period, as contained in the proposition submit-  
16 ted to vote, when the bonds shall become payable, which  
17 shall not exceed thirty-four years from the date thereof;  
18 determine whether all or a portion of the bonds will be

19 subject to redemption prior to the maturity thereof; and  
20 prescribe a form for executing the bonds authorized.

**§13-1-15. Bonds to be payable in annual or semiannual installments.**

1 Bonds shall be made payable in annual or semiannual  
2 installments beginning not more than three years after the  
3 date thereof and the amount payable in each year may be  
4 so fixed that when the annual interest is added to the  
5 principal amount to be paid, the total amount payable in  
6 each year in which part of the principal is payable shall be  
7 as nearly equal as practicable. Once principal payments  
8 commence, it shall be an immaterial variance if the  
9 difference between the largest and smallest amounts of  
10 principal and interest payable annually or semiannually  
11 during the term of the bonds shall not exceed five percent  
12 of the total authorized issue. Bonds may be payable in  
13 annual or semiannual installments beginning not more  
14 than three years after the date thereof, each installment  
15 being as nearly equal in principal amount as practicable.

**§13-1-15a. Bonds may be subject to redemption.**

1 All or a portion of the bonds may be subject to redemp-  
2 tion prior to the maturity thereof at the option of the body  
3 issuing the same as established by resolution of the  
4 governing body authorizing the bonds. The body issuing  
5 the bonds may not levy taxes in connection with the  
6 redemption of any bonds in excess of the taxes that would  
7 have been levied for the payment of principal of and  
8 interest on the bonds in any year.

**§13-1-16. Recital of certification that bonds are issued in conformity with constitution and statutes; effect thereof with Attorney General's endorsement.**

1 The resolution authorizing the bonds provided for in  
2 section fourteen of this article may direct that they  
3 contain the following recital:

4 "It is certified that this bond is authorized by and is  
5 issued in conformity with the requirements of the Consti-  
6 tution and Statutes of the State of West Virginia."

7 The recital, when the bonds have been endorsed by the  
8 Attorney General as provided in section twenty-eight of  
9 this article, are considered an authorized declaration by  
10 the governing body of the political division and to import  
11 that there is constitutional and statutory authority for  
12 incurring the debts and issuing the bonds; that all the  
13 proceedings therefor are regular; that all the acts, condi-  
14 tions and things required to exist, happen and be per-  
15 formed precedent to and in the issuance of the bonds have  
16 existed, happened and been performed in due time, form  
17 and manner as required by law; that the amount of the  
18 bond and the issue of which it forms a part, together with  
19 all other indebtedness, does not exceed any limit or limits  
20 prescribed by the constitution or statutes of this state; and  
21 that all questions connected with incurring the debt and  
22 issuing the bonds have been first submitted to a vote of the  
23 people and have received the required amount of all the  
24 votes, pursuant to section four of this article, cast for and  
25 against the same at an election regularly called and held  
26 for the purpose after notice published and posted in the  
27 manner required by law. If any bond be issued containing  
28 the recital, and also containing the endorsement of the  
29 Attorney General as aforesaid, it shall be conclusively  
30 presumed that the recital, construed according to the  
31 import hereby declared, is true and neither the political  
32 division nor any taxpayer thereof shall be permitted to  
33 question the validity or regularity of the obligation in any  
34 court or in any action or proceeding.

**§13-1-17. Bonds shall be registered.**

1 The bonds issued hereunder shall be issued only in fully  
2 registered form and shall carry registration privileges as  
3 set forth in the resolution authorizing the bonds.

**§13-1-19. Signing, sealing and delivery of bonds.**

1 All bonds issued under this article by any county shall  
2 be signed by the president of the county commission and  
3 countersigned by the clerk of the county commission;  
4 bonds issued by any municipality shall be signed by the  
5 mayor or other chief executive and countersigned by the  
6 clerk, recorder or secretary; bonds issued by a county  
7 board of education shall be signed by the president of the  
8 board of education and countersigned by the secretary  
9 thereof. The seal of the political division shall be affixed  
10 to the bonds. The delivery of any bonds so executed at any  
11 time thereafter shall be valid, although before the date of  
12 delivery the person signing the bonds shall have ceased to  
13 hold office.

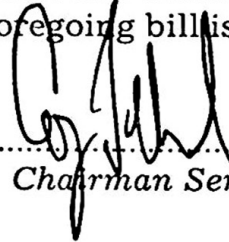
**§13-1-21. Advertisement and sale of bonds.**

1 The governing body of the political division issuing  
2 bonds pursuant to this article shall sell the same and  
3 collect the proceeds, which proceeds shall be deposited  
4 with its treasurer. The governing body of the political  
5 division shall advertise such bonds for sale, on sealed bids  
6 or electronic bids if the governing body elects to utilize an  
7 electronic bidding procedure, which advertisement shall  
8 be published as a Class II legal advertisement in compli-  
9 ance with the provisions of article three, chapter fifty-nine  
10 of this code and the publication area for the publication  
11 shall be the political division. The first publication shall  
12 be made at least fourteen days before the date fixed for the  
13 reception of bids. The advertisement shall also be pub-  
14 lished in the *Bond Buyer* or similar publication and the  
15 advertisement may be published electronically: *Provided,*  
16 That all advertisements required by this section may  
17 consist of an abbreviated notice of the sale of the bonds.  
18 The governing body may reject any and all bids. If the  
19 bonds are not sold pursuant to the advertisement, they  
20 may, within one hundred twenty days after the date



21 advertised for the reception of bids, be sold by the govern-  
22 ing body at private sale, but no private sale shall be made  
23 at a price less than the highest bid which is received. If  
24 not sold, the bonds shall be readvertised in the manner  
25 herein provided. In no event shall bonds be sold for less  
26 than their par value.

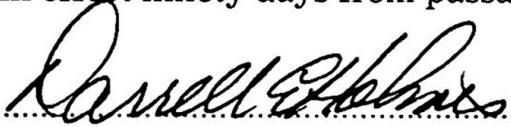
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

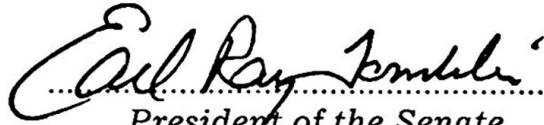
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *8<sup>th</sup>* .....  
Day of *May* ....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY - 5 2009

Time 11:00am