

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



# ENROLLED

HOUSE BILL No. 273

(By Mr. Pyles)



PASSED March 12, 1937

In Effect from Passage

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**House Bill No. 273**

(By MR. PYLES)

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AN ACT to amend article eleven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter six, acts of the Legislature, regular session, one thousand nine hundred thirty-three, by adding thereto sections eleven, twelve, thirteen, fourteen and fifteen, relating to abatement of stream pollution by the state water commission.

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

That article eleven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter six, acts of the Legislature, regular session, one thousand nine hundred thirty-three, be amended by adding thereto new

sections eleven, twelve, thirteen, fourteen and fifteen, to read as follows:

Section 11. Any person, corporation, municipal corporation, partnership or legal entity, upon whom a final order of the state water commission was herein provided is served, which order shall not have been set aside by a court of competent jurisdiction upon complaint filed as herein provided or upon whom a final order is served as modified to conform with a judgment of such court directing modification, shall, within thirty days after receipt of such order, or after judgment affirming such order is entered, take steps for the acquisition or construction of such plants, machinery or works, or for such repair, alteration or extension of existing plants, machinery or works, as may be necessary for the disposition or treatment of the organic or inorganic matter which is causing or contributing to, or is about to cause or contribute to, a polluted condition of such water or waters, or shall take such other steps as may be necessary to comply with said final order of the state water commission. If the offender be municipal corporation, the cost of acquisition, construction, repair, alteration or extension of the necessary

20 plant, machinery or works, or taking such other steps as may  
21 be necessary to comply with said order, shall be paid out of  
22 funds on hand available for such purpose, or out of the gen-  
23 eral funds of such municipal corporation, not otherwise ap-  
24 propriated; or if there be not sufficient funds on hand or  
25 unappropriated, then the necessary funds shall be raised by  
26 issuance of bonds, such bond issue to be subject to the ap-  
27 proval of the state sinking fund commission and the attorney  
28 general of the state of West Virginia.

29 If the estimated cost of the steps necessary to be taken by  
30 such municipal corporation to comply with such final order  
31 of the state water commission, is such that the bond issue  
32 necessary to finance such project would not raise the total  
33 outstanding bonded indebtedness of such municipal corpora-  
34 tion, in excess of the constitutional limit imposed upon such  
35 indebtedness by the constitution of this state, then and in  
36 that event the necessary bonds may be issued as a direct obli-  
37 gation of such municipal corporation, and retired by a gen-  
38 eral tax levy to be levied against all property within the limit  
39 of such municipal corporation listed and assessed for taxa-  
40 tion. If the amount of such bonds necessary to be issued

41 would raise the total outstanding bonded indebtedness of  
42 such municipal corporation above said constitutional limita-  
43 tion on such indebtedness, or if such municipal corporation  
44 by its governing body shall determine against the issuance of  
45 direct obligation bonds, then such municipal corporation  
46 shall issue revenue bonds and provide for the retirement  
47 thereof in the same manner and subject to the same condi-  
48 tions as provided for the issuance and retirement of bonds in  
49 chapter twenty-five, acts of the Legislature, first extraordi-  
50 nary session, one thousand nine hundred thirty-three, entitled  
51 “An act to authorize municipal corporations and/or sanitary  
52 districts to construct, own, equip, operate, maintain and ap-  
53 prove works for the collection and/or treatment, purification  
54 and disposal of sewerage; to authorize charges against own-  
55 ers of premises for the use of such works and to provide for  
56 the collection of same; to authorize municipal corporations  
57 and/or sanitary districts to issue revenue bonds payable solely  
58 from the revenues of such works and to make such bonds  
59 exempt from taxation; to authorize contracts for the use of  
60 such works by other municipal corporations and political sub-  
61 divisions, and charges against owners of premises therein

62 served thereby and a lien against such premises”: *Provided*,  
63 *however*, That the provisions of section six of the above-  
64 mentioned act, allowing objections to be filed with the gov-  
65 erning body, and providing that a written protest of thirty  
66 per cent or more of the owners of real estate shall require  
67 a four-fifths vote of the governing body for issuance of said  
68 revenue bonds, shall not apply to bond issues proposed by  
69 any municipal corporation to comply with the final order  
70 issued by the state water commission, under the authority of  
71 this act, and such objections or submission of written pro-  
72 test shall not be authorized, nor shall the same, if had, oper-  
73 ate to justify or excuse failure to comply with such final  
74 order of the state water commission.

75 The funds made available by the issuance of either direct  
76 obligation bonds or revenue bonds as herein provided, shall  
77 constitute a “sanitary fund”, and shall be used for no other  
78 purpose than for carrying out such order or orders of the  
79 state water commission; no public money so raised shall be  
80 expended by any municipal corporation for any purpose  
81 enumerated in this act, unless such expenditure and the  
82 amount thereof has been approved by the state water com-

83 mission.

Sec. 12. The construction, acquisition, improvement, equip-  
2 ment, custody, operation, repair and maintenance of any  
3 plants, machinery or works by any municipal corporation, in  
4 compliance with a final order of the state water commission,  
5 as herein provided, other than the financing thereof, and the  
6 rights, powers, and duties, of such municipal corporation  
7 and the respective officers and departments thereof, whether  
8 the same shall be financed by the issuance of revenue or  
9 direct obligation bonds, shall be governed by the provisions  
10 of said chapter twenty-five, acts of the Legislature, first ex-  
11 traordinary session, one thousand nine hundred thirty-three.

Sec. 13. It shall be the duty of each individual offender  
2 and of each member of a partnership, and of each member  
3 of the governing body of a municipal corporation, and of  
4 each member of the board of directors or other governing  
5 body of a private corporation, association or other legal  
6 entity, against whom a final order has been issued, as herein  
7 provided, to begin appropriate action or proceedings to  
8 comply with such order, within thirty days from the receipt  
9 thereof, if no action has been commenced in the circuit court

10 of the county where such violation is alleged to exist to set  
11 aside or vacate such order, as provided in this act, or, in  
12 case such action has been brought, within thirty days from  
13 the date of judgment affirming such order, or from the date  
14 of the receipt of such order, as modified in conformity with  
15 the judgment of such court. Failure of the governing body  
16 in the case of a municipal corporation, or of the board of  
17 directors or any other governing body of any private cor-  
18 poration, association or other legal entity, to provide for the  
19 financing and construction of such works as may be necessary  
20 to carry out said order by appropriate ordinance or resolu-  
21 tion, shall constitute failure to begin appropriate action or  
22 proceedings to comply with such order, as above provided.

23 Any individual offender, or member of a partnership, or any  
24 officer or member of the board of directors of a private  
25 corporation, association, or other legal entity, or any mayor,  
26 councilman or member of sanitary board as provided for in  
27 said chapter twenty-five, acts of the Legislature, first ex-  
28 traordinary session, one thousand nine hundred thirty-three,  
29 of any municipal corporation, who fails or refuses to dis-  
30 charge any duty imposed upon him by this act or by such



31 final order of the state water commission, or any duty im-  
32 posed upon him by reason of any ordinance of the governing  
33 body of any municipal corporation, or resolution of the board  
34 of directors or other governing body of any private corpora-  
35 tion, association or other legal entity, pursuant to this act  
36 or to such final order, shall be deemed guilty of a misde-  
37 meanor, and upon conviction thereof, shall be fined in any  
38 sum of not less than twenty-five dollars, nor more than one  
39 hundred dollars, to which may be added imprisonment in  
40 the county jail for any period not to exceed ninety days.  
41 Each day that such failure or refusal to discharge such  
42 duties continues, shall be and constitute a separate and  
43 additional offense for the purposes of this section.

Sec. 14. The state water commission shall have the au-  
2 thority, in its discretion, to extend the time fixed in any  
3 final order issued by it, within which any offender is ordered  
4 to correct or abate a condition of pollution of any water  
5 or waters, upon written petition filed with such commission  
6 not less than thirty days prior to the time fixed in such  
7 order, when it shall appear that a good faith effort to comply  
8 with said order is being made, and that it shall be impossible

9 for such offender to complete the project of work undertaken  
10 within the time so fixed. Any person, corporation, municipal  
11 corporation, partnership, association or other legal entity,  
12 who shall fail or refuse to correct or abate such polluted  
13 condition in compliance with such order within the time  
14 fixed or within the time additionally granted as herein pro-  
15 vided, shall be subject to a penalty of one hundred dollars  
16 for each day that such polluted condition continues to exist  
17 after the time so fixed, or additionally granted, which may  
18 be recovered in a civil suit brought in the name of the state  
19 of West Virginia and which penalty shall be in addition to  
20 the penalty provided in section thirteen of this act. It shall  
21 be the duty of the attorney general to prosecute all actions  
22 for penalties under this section, and all penalties so re-  
23 covered shall be paid into the common school fund of the  
24 state. The penalties accruing for any two or more days  
25 under the provisions of this section may be recovered in one  
26 complaint and may be joined in one paragraph of said com-  
27 plaint.

Sec. 15. Being for the public health, safety and welfare,

2 this act shall be liberally construed to effectuate the pur-

3 poses thereof, and all existing laws or parts of laws of this  
4 state inconsistent with this act are hereby repealed.

I certify that the foregoing act,  
having been presented to the Governor for  
his approval, and not having been returned  
by him to the House of the Legislature in  
which it originated within the time pre-  
scribed by the constitution of the state, has  
become a law without his approval.

This the 19<sup>th</sup> day of March,

19...37...

  
J. M. Smith  
SECRETARY OF STATE

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

*Carl B. G. Heath*  
 .....  
 Chairman Senate Committee

*Walter B. Baker*  
 .....  
 Chairman House Committee

Originated in the.....

Takes effect..... passage.

*Charles D. Smith*  
 .....  
 Clerk of the Senate

*Wm. S. Hall*  
 .....  
 Clerk of the House of Delegates

*Chas. E. Hays*  
 .....  
 President of the Senate

*J. A. Thomas*  
 .....  
 Speaker House of Delegates

The within.....this the.....

day of....., 1937.

.....  
 Governor.

Filed in the office of the Secretary of State  
 of West Virginia. MAR 19 1937

Wm. S. O'BRIEN,  
 Secretary of State