

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

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## ENROLLED

*Comm. Sub. for*

SENATE BILL No. 120

(By Mr. ....)

PASSED March 11th 1939

In Effect From Passage



0281

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**Senate Bill No. 120**

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(Originating in the Committee on the Judiciary)

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[Passed March 11, 1939 ; in effect from passage.]

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AN ACT relating to municipal water and sewer systems; providing means of consolidating the same, and, in connection therewith, the refunding of securities previously issued for any existing waterworks or sewerage system, or both, by municipalities.

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

Section 1. *Definitions.* When used in this act the term  
2 "waterworks" means and includes a waterworks system in  
3 its entirety or any integral part thereof, including mains,  
4 hydrants, meters, valves, standpipes, storage tanks, pump  
5 tanks, intakes, wells, impounding reservoirs, pumps, ma-  
6 chinery, purification plants, softening apparatus, and all

7 other elements useful in connection with a water supply.

8 The term "sewerage system" means and includes any or  
9 all of the following: A sewerage treatment plant or plants,  
10 collecting, intercepting and outlet sewers, lateral sewers,  
11 and drains, force mains, conduits, pumping stations, ejector  
12 stations and all other appurtenances, extensions and im-  
13 provements necessary, useful or convenient for the collec-  
14 tion, treatment and disposal in a sanitary manner of sewage  
15 and industrial wastes.

16 The term "combined waterworks and sewerage system"  
17 means and includes a waterworks and sewerage system,  
18 which the municipality determines by ordinance to operate  
19 in combination.

20 The term "municipality" means and includes any city  
21 or incorporated town organized under any laws of the state  
22 of West Virginia.

23 The term "governing body" means and includes the  
24 mayor and city council of any such city and the president  
25 and board of trustees of any such incorporated town.

Sec. 2. *Authority to Maintain or Operate Combined Water-*  
2 *works and Sewerage System; Powers Generally.* Any munici-

4 pality owning and operating a waterworks and sewerage  
 5 system may provide for the inclusion of such waterworks  
 6 and sewerage system in a combined waterworks and  
 7 sewerage system under this act, and in connection therewith  
 8 may provide for paying or refunding any unpaid and out-  
 9 standing obligations against either the waterworks or  
 10 sewerage system, or both, which are payable solely from the  
 11 revenues of any such waterworks or sewerage system, or any  
 12 part or parts thereof included or combined in such combined  
 13 waterworks and sewerage system. Any municipality owning  
 14 such a combined waterworks and sewerage system may im-  
 15 pose and collect charges or rates for the use of such system  
 as provided in this act.

Sec. 3. *Refund of Outstanding Obligations or Securities;*

2 *Exchange of Bonds.* Whenever a waterworks and sewerage  
 3 system is included in a combined waterworks and sewerage  
 4 system under this act and there are unpaid and outstanding  
 5 water revenue bonds, water certificates, sewerage revenue  
 6 bonds or any other obligations or securities previously issued  
 7 which are payable solely from the revenues of such water-  
 8 works or such sewerage system or any part thereof, such

9 outstanding obligations or securities may be refunded by the  
10 issue and exchange therefor of revenue bonds to be issued  
11 under this act with the consent of all of the respective  
12 holders of such outstanding obligations or securities. Such  
13 bonds may be sold in installments at different times, or an  
14 entire issue or series may be sold at one time. Such bonds  
15 shall bear interest at a rate not to exceed six per cent per  
16 annum payable semi-annually and shall mature within the  
17 period of usefulness of the project involved, to be determined  
18 by the governing body and in any event not more than forty  
19 years. Such bonds may be in such denomination or de-  
20 nominations, may be in such form, either coupon or register-  
21 ed, may carry such registration and conversion privileges,  
22 may be executed in such manner, may be payable in such  
23 medium of payment, at such place or places, may be subject  
24 to such terms of redemption, with or without a premium,  
25 may be declared or become due before the maturity date  
26 thereof, may provide for the replacement of mutilated, de-  
27 stroyed, stolen, or lost bonds, may be authenticated in such  
28 manner and upon compliance with such conditions, and  
29 may contain such other terms and covenants, as may be

30 provided by ordinance of the governing body of the munici-  
31 pality. Notwithstanding the form or tenor thereof, and in  
32 the absence of an express recital on the face thereof that the  
33 bond is non-negotiable, all such bonds shall at all times be,  
34 and shall be treated as, negotiable instruments for all  
35 purposes. Such bonds shall be sold in such manner as the  
36 governing body shall determine and if issued to bear interest  
37 at the rate of six per cent per annum shall be sold for not  
38 less than par and accrued interest. If any such bonds shall  
39 be issued to bear interest at a rate of less than six per cent  
40 per annum, the minimum price at which they may be sold  
41 shall be such that the interest cost to such municipality of the  
42 proceeds of such bonds shall not exceed six per cent per  
43 annum computed to maturity according to the standard  
44 table of bond values. In case any officer whose signature  
45 appears on such bonds or coupons attached thereto shall  
46 cease to be such officer before the delivery of the bonds to  
47 the purchaser, such signature shall nevertheless be valid  
48 and sufficient for all purposes, with the same effect as if he  
49 had remained in office until the delivery of the bonds. Such  
50 bonds shall have all the qualities of negotiable instruments

51 under the law of this state. Whenever any outstanding  
52 obligations or securities previously issued which are payable  
53 solely from the revenues of any waterworks or sewerage  
54 system included in a combined waterworks and sewerage  
55 system under this act are refunded, such outstanding obli-  
56 gations or securities shall be surrendered and exchanged  
57 for revenue bonds of such combined waterworks and  
58 sewerage system of a total principal amount which shall not  
59 be more and may be less than the principal amount of the  
60 obligations or securities exchanged and interest thereon to  
61 the date of exchange. Provision may be made that each  
62 bond to be exchanged for refunding bonds, shall be kept  
63 intact and shall not be cancelled or destroyed until the  
64 refunding bonds, and interest thereon, have been finally paid  
65 and discharged but shall be stamped with a legend to the  
66 effect that such bond has been refunded pursuant to this  
67 act.

Sec. 4. *Ordinance; Contents.* The governing body of any  
2 municipality availing itself of the provisions of this act, shall  
3 adopt an ordinance describing in a general way the contem-  
4 plated project. If it is intended to include in the combined

5 waterworks and sewerage system any existing waterworks or  
6 any existing sewerage system, such ordinance shall determine  
7 that it be so included in such combined system and shall de-  
8 scribe in a general way such existing waterworks or sewerage  
9 system to be included in the combined waterworks and sewer-  
10 age system. Such ordinance shall state the means provided for  
11 refunding any obligation unpaid and outstanding payable  
12 solely from the revenue of any such waterworks or sewerage  
13 system. Such ordinance shall determine the period of useful-  
14 ness of the contemplated project. Such ordinance shall fix  
15 the amount of revenue bonds proposed to be issued, the interest  
16 rate and any other details in connection with such bonds  
17 deemed advisable.

Sec. 5. *Publication of Ordinance; Posting; Petition for*  
2 *Referendum; Election.* After the ordinance for any project  
3 under this act, has been adopted and approved, it shall be pub-  
4 lished once in a newspaper published and having a general cir-  
5 culation in the municipality undertaking such project, or if  
6 there be no such newspaper, then by posting such ordinance in  
7 at least three of the most public places in such municipality.  
8 If no petition is filed with the clerk of the governing body as



9 hereinafter provided, within ten days after the publication or  
10 posting of such ordinance, then after the expiration of such  
11 ten day period such ordinance shall be in full force and effect,  
12 but if within such period of ten days a petition is filed with  
13 the clerk of such municipality signed by fifteen per cent of  
14 the number of voters voting for the presiding officer of the  
15 governing body at the last preceding general municipal elec-  
16 tion, asking that the question of combining such waterworks  
17 and sewerage systems as provided in such ordinance and the  
18 issuance of revenue bonds for refunding such obligations be  
19 submitted to the legal voters of the municipality, the govern-  
20 ing body of such municipality shall call a special election in  
21 the manner provided by law to vote upon such question. If it  
22 appears upon the canvass of the election by the governing body  
23 that a majority of the voters voting upon such question at such  
24 election voted in favor of combining such waterworks and sew-  
25 erage systems and the issuance of such revenue bonds, then  
26 such ordinance shall be in full force and effect, but if a ma-  
27 jority of the votes cast are against the combining of such  
28 waterworks and sewerage systems and the issuance of such

29 revenue bonds, then such municipality shall proceed no further  
30 under such ordinance.

Sec. 6. *Bonds Payable Solely From Revenue; Limitation*  
2 of *Municipal Indebtedness Inapplicable*. Revenue bonds issued  
3 under the provisions of this act shall be payable solely from  
4 the revenues derived from the operation of the combined  
5 waterworks and sewerage system on account of which such  
6 bonds are issued, and such bonds shall not in any event con-  
7 stitute an indebtedness of the municipality within the meaning  
8 of any constitutional or statutory limitation and it shall be so  
9 stated on the face of each bond.

Sec. 7. *Powers of Municipality; Regulations; Rates and*  
2 *Charges; Lien; Recovery*. The governing body of any munici-  
3 pality availing itself of this act, shall have power to make,  
4 enact and enforce all needful rules and regulations for the  
5 management and maintenance of the combined waterworks  
6 and sewerage system of such municipality and for the use  
7 thereof, and shall also have power to make, enact and enforce  
8 all needful rules and regulations and ordinances for the care  
9 and protection of any such system, which may be conducive  
10 to the preservation of the public health, comfort and conveni-

11 ence and to rendering the water supply of such municipality  
12 pure and the sewerage harmless in so far as it is reasonably  
13 possible so to do, and any such municipality shall have power  
14 and it is hereby authorized to charge the inhabitants thereof  
15 during the period that said bonds are outstanding a reason-  
16 able compensation for the use and service of such combined  
17 waterworks and sewerages system and to establish charges or  
18 rates for such purpose, subject to the approval of the public  
19 service commission. Separate rates may be fixed for the water  
20 and sewer services respectively or single rates for the combined  
21 water and sewer services. Such charges or rates, whether  
22 separate or combined, shall be sufficient at all times to pay  
23 the cost of operation and maintenance of the combined water-  
24 works and sewerage system, provide an adequate reserve fund,  
25 an adequate depreciation fund and pay the principal of and  
26 interest upon all revenue bonds issued under this act. Charges  
27 or rates shall be established, revised and maintained by ordi-  
28 nance and become payable as the governing body may deter-  
29 mine by ordinance, and such rates may be changed from time  
30 to time as needful, consistently with the provisions of this

31 act, and the rules and regulations, and the approval of the  
32 public service commission.

Sec. 8. *Lien of Bonds; Enforcement; Receivership.* There  
2 shall be and there is hereby created a statutory mortgage lien  
3 upon such combined waterworks and sewerage system which  
4 shall exist in favor of the holder of bonds hereby authorized  
5 to be issued, and each of them, and to and in favor of the  
6 holder of the coupons attached to said bonds, and such com-  
7 bined waterworks and sewerage system shall remain subject to  
8 such statutory mortgage lien until payment in full of the  
9 principal and interest of said bonds. Any holder of bonds  
10 issued under the provisions thereof, or of any coupons repre-  
11 senting interest accrued thereon, may, either at law or in equ-  
12 ity enforce the statutory mortgage lien hereby conferred, and  
13 may, by proper suit, compel the performance of the duties of  
14 the officials of the issuing municipality set forth herein. If  
15 there be default in the payment of the principal of and/or in-  
16 terest upon any of said bonds, any court having jurisdiction  
17 in any proper action may appoint a receiver to administer said  
18 combined waterworks and sewerage system on behalf of the  
19 municipality with power to charge and collect rates sufficient

20 to provide for the payment of said bonds and interest thereon,  
21 and for the payment of the operating expenses and to apply  
22 the income and revenues in conformity herewith and the ordi-  
23 nance providing for the issuance of such bonds subject to  
24 the approval of the public service commission.

Sec. 9. *Deposit of Revenues in Special Fund.* All revenues  
2 derived from the operation of any combined waterworks and  
3 sewerage system under this act shall be set aside as collected  
4 and deposited in a special fund of the municipality and used  
5 only for the purpose of paying the cost of operating and  
6 maintaining such system, providing an adequate reserve  
7 fund, an adequate depreciation fund, and paying the prin-  
8 cipal of and interest on the revenue bonds issued by the  
9 municipality under the provisions of this act.

Sec. 10. *Accounts; Audit.* Any municipality operating a  
2 combined waterworks and sewerage system under this act,  
3 shall set up and maintain a proper system of accounts in ac-  
4 cordance with the requirements of the public service com-  
5 mission showing the amount of revenue received from such  
6 combined waterworks and sewerage system and the appli-  
7 cation of the same. At least once each year such municipality

8 shall cause such accounts to be properly audited, and a report  
9 of such audit shall be open to the public for inspection at all  
10 reasonable times.

Sec. 11. *Submission to Referendum Not Required.* This  
2 act shall be construed as authorizing the issuance of revenue  
3 bonds provided for herein without submitting the proposition  
4 of approval of the same to the voters, as required in the case of  
5 the issuance of bonds payable out of taxes, levied for the  
6 payment of the same, except as herein provided.

Sec. 12. *Provisions of Act Cumulative.* The provisions of  
2 this act shall be cumulative and shall be considered as con-  
3 ferring separate and additional power on the municipalities  
4 of this state, and as an addition to and not a limitation on  
5 the power of any such municipality to construct or acquire  
6 or improve and extend waterworks and sewerage systems,  
7 impose and collect charges or rates, and issue bonds therefor  
8 under the laws now existing or that may hereafter be  
9 enacted.

Sec. 13. *Partial Invalidity.* The invalidity of any portion  
2 of this act shall not affect the validity of the remainder of  
3 this act.

12-21  
This the day of  
to yab  
ent aidT  
STATES OF TEXAS

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

*E. O. Wiseman*

Chairman Senate Committee

*W. H. Walker*

Chairman House Committee

Originated in the

*Senate*

Takes effect

*After*

passage

*Charles H. Smith*

Clerk of the Senate

*W. H. Walker*

Clerk of the House of Delegates

*W. H. Walker*

President of the Senate

*James T. Housh*

Speaker House of Delegates

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 prescribed by the constitution of the state, has become a law without his approval. The within this the 1939.

This the 17 day of March,

Governor

1939

*W. H. Walker*

SECRETARY OF STATE